

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE ANTIOCH COMPANY :
LITIGATION TRUST, :
Plaintiff, : CASE NO. 3:10-cv-00156
vs. : (Judge Timothy S. Black)
LEE MORGAN, et al., :
Defendants. :
- - -

VOLUME I

Deposition of MARK A. GREENBERG, a
witness herein, taken as upon cross-examination by
the Defendants pursuant to the Ohio Rules of Civil
Procedure, before me, Kelly Green, RPR, a Notary
Public within and for the State of Ohio, at Taft,
Stettinius & Hollister, 425 Walnut Street, Suite
1800, Cincinnati, Ohio, on Monday, August 26,
2013, at 9:08 a.m.

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13 ALSO PRESENT:

14 Tim Miller
15 Jess Ultz
16 Asha Moran
17 Lee Morgan

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1 MARK A. GREENBERG,
2 a witness herein, having been duly sworn, was
3 examined and testified as follows:

4 CROSS-EXAMINATION

5 BY MR. SCHEIER:

6 Q. What is your name?

7 A. Mark Alan Greenberg.

8 Q. Good morning, Mark Alan Greenberg. My
9 name is Mike Scheier. I'm an attorney with the
10 law firm of Keating, Meuthing & Klekamp, and my
11 clients in this case are Lee Morgan and Asha
12 Moran, who are sitting right behind me.

13 In addition, I represent Marty Moran and
14 a former defendant, Chandra Attiken, and a number
15 of Morgan trusts. I'll be asking you questions
16 today. Have you ever been deposed before?

17 A. Yes.

18 Q. So you understand the ground rules?

19 A. Mm-hmm.

20 Q. I'll ask questions; you'll answer them
21 under oath. I'll give you the courtesy of
22 allowing you to complete your responses, and I'd
23 ask for the same courtesy, to allow me to finish
24 my question, although you might be able to

1 anticipate what the end of the question is.

2 If you need a break, you let me know.

3 You'll also need to verbalize all answers so that
4 Kelly can take them down since she's going to be
5 transcribing our questions and your answers here
6 today. What's your current home address?

7 A. I live at 11535 Iron Liege Lane,
8 Cincinnati, Ohio, 45249.

9 Q. How many times prior to this deposition
10 have you sat for a deposition?

11 A. One, actually.

12 Q. Were you deposed in your personal
13 capacity or as an expert witness?

14 A. In my personal capacity.

15 Q. Can you describe just very generally
16 what that piece of litigation involved?

17 A. Sure. I was on the board of directors
18 of a company. I was the chairman, I was also CEO
19 of the company, and we were sued by an outside
20 shareholder.

21 Q. When you say "we were sued," who was
22 sued?

23 A. The board of directors was sued.

24 Q. Were you named personally in that suit?

1 A. Yes.

2 Q. Do you know if that suit was alleging a
3 brief of fiduciary duty?

4 A. Yes.

5 Q. Can you describe what the plaintiff's
6 allegations were in that case, in particular
7 against you, if they were particularized in that
8 way?

9 A. I don't recall all the specifics of the
10 -- the general issue was that the board was --
11 consisted of members who were investors in another
12 company. The two other members of the board were
13 member -- were private equity investors in the
14 company we had. And as we were selling the
15 company, I became chairman of another one of their
16 companies.

17 And the complaint was generally that we
18 were not focusing on the company in selling the
19 company, which we, in fact, had, and that -- that
20 we were -- we somehow conspired to go where we
21 thought the better options were.

22 Q. Do you recall in what court that
23 litigation was pending?

24 A. It was Hamilton County.

1 Q. And state court, as far as you
2 understand?

3 A. Yes.

4 Q. Do you recall who the judge was?

5 A. I don't. Never got that far.

6 Q. Who represented you as counsel?

7 A. Thompson Hine.

8 Q. Anyone in particular there?

9 A. I don't remember a name.

10 Q. Do you recall who represented the
11 plaintiff in that case?

12 A. The Wolfe Law Firm.

13 Q. Do you recall who the plaintiff was?

14 A. Yes. It was Robert Wolfe.

15 Q. How did that lawsuit resolve, if you
16 recall?

17 A. It was settled.

18 Q. And was there a monetary payment made to
19 the plaintiff?

20 A. Yes.

21 Q. Do you recall the amount?

22 A. It was about \$200,000.

23 Q. Did you make -- did you contribute from
24 any of your personal assets to that settlement?

1 A. I don't think so.

2 Q. Was that settlement covered by --

3 A. Sure.

4 Q. -- insurance?

5 A. Yes, it was.

6 Q. And what company was --

7 A. It was the Jay Industrial Technologies
8 Group.

9 Q. Do you recall the year of the
10 litigation?

11 A. I don't, not offhand.

12 Q. Have you been sued as -- for anything
13 you've done or any decision you've made as an
14 officer or director other than the one instance
15 we've just --

16 A. No.

17 Q. -- discussed?

18 A. It's the only suit I've ever had.

19 Q. Have you ever given a deposition as an
20 expert witness before?

21 A. No.

22 Q. You have testified in court previously
23 as an expert witness, correct?

24 A. Yes, in a bankruptcy case.

1 (Off-the-record discussion.)

2 Q. (By Mr. Scheier) Do you recall, in the
3 lawsuit that Mr. Wolfe filed, were there any
4 allegations made against you personally in regard
5 to your conduct as the -- as a director or as a
6 CEO?

7 A. There were all kinds of things in
8 there. I just don't recall what they were
9 specifically.

10 Q. Did you retain a copy of your deposition
11 transcript?

12 A. No.

13 Q. You're currently employed with
14 Silverstone Advisors; is that right?

15 A. Yes.

16 Q. And I notice that Silverstone Advisors,
17 LLC, is doing business as Silverstone
18 Advisors/Blackbird Capital Group; is that right?

19 A. Yes.

20 Q. At some point were there two entities --
21 Silverstone Advisors and Blackbird Capital?

22 A. There were.

23 Q. And was Blackbird Capital an
24 organization that Mr. Vota was affiliated with?

1 A. Yes.

2 Q. Were you a member of Blackbird or --

3 A. No.

4 Q. -- were you a member of Silverstone?

5 A. I was never a member of Blackbird.

6 Q. And as Kelly mentioned, I do understand
7 you probably will anticipate my questions, but it
8 will be much easier for the reporter --

9 A. Mm-hmm.

10 Q. -- if you'd show some patience and allow
11 me to complete my questions.

12 So I understand that Silverstone is a
13 limited liability company?

14 A. Yes.

15 Q. Who are its members?

16 A. Myself, John Hopper, and John Vota.

17 Q. And are each of those three individuals
18 active members of that business?

19 A. Yes.

20 Q. Did any of those individuals assist you
21 in any way in executing your duties as an expert
22 witness in this case?

23 A. Apart from listening to me go on about
24 it, the answer would be, generally, no.

1 Q. What do you mean listening to you go on
2 about it?

3 A. Just obviously talked about what I was
4 looking at and -- and some conversation around
5 that, but they never were involved with any of the
6 drafting or any of the opinion.

7 Q. Other than you, Mr. Vota, and
8 Mr. Hopper, does Silverstone have any other
9 employees?

10 A. Yes.

11 Q. How many?

12 A. Just one other.

13 Q. Who's that?

14 A. His name is Hardik Mehta.

15 Q. Did Mr. Mehta assist you in any way in
16 executing your duties as an expert witness?

17 A. No.

18 Q. Now, I've referenced you as an expert
19 witness a number of times. I just want to verify
20 for the record that you, in fact, have been
21 engaged by the plaintiff in this particular
22 litigation, Mr. Miller, to serve as an expert
23 witness on his behalf to give opinion testimony
24 against my clients; is that correct?

1 A. That's correct.

2 Q. Have you formulated any opinions that
3 you are prepared to give at trial?

4 A. I have.

5 Q. Okay. And you also prepared a written
6 report in this case; is that right?

7 A. That's correct.

8 Q. And is it fair to say that the opinions
9 that you will be offering at trial are contained
10 within that report?

11 A. Largely contained in that report.

12 Q. Is it the law firm of Taft, Stettinius &
13 Hollister that retained you, or somebody else?

14 A. I was contacted by Taft and retained by
15 the Litigation Trust. They're the ones paying the
16 bills, I would assume.

17 Q. You don't know who's paying your bills?

18 A. It's the Litigation Trust.

19 Q. Have they paid all your bills?

20 A. Yes, they have.

21 Q. Your report indicated you were retained
22 in early June of 2013; is that right?

23 A. That's correct.

24 Q. Is there a document that evidences your

1 retention such as some sort of a contract or an
2 engagement letter?

3 A. Yes, there is.

4 Q. I didn't notice that in your document
5 production. Do you know if you provided that to
6 the Taft lawyers to hand over as part of the
7 document production?

8 A. I don't believe I did that. I thought
9 that it was in the -- in the file; but if it's
10 not, that's easy to remedy.

11 Q. Well, we didn't get it. We did ask for
12 your entire file, correct?

13 A. I believe that was the entire file.

14 Q. Well, apparently it wasn't because we
15 didn't get your retention letter. So is there any
16 document other than the retention letter from your
17 file that you failed to provide to the Taft
18 lawyers to turn over to us?

19 A. Not that I know of.

20 Q. Although you might have said it, who
21 initially from the Taft law firm contacted you
22 about serving as an expert witness in the case?

23 A. Timothy Miller.

24 Q. Do you recall when Mr. Miller contacted

1 you?

2 A. I would think sometime in late
3 May/middle May, if I recall.

4 Q. That was by phone call?

5 A. Yes.

6 Q. Prior to Taft engaging you in this
7 firm -- or their client, the trust -- had you
8 consulted with Taft in any other piece of
9 litigation as either a testifying expert or a
10 non-testifying consultant?

11 A. No, I didn't. I have not.

12 Q. Mr. Greenberg, is it your understanding
13 that you've been personally retained by the Taft
14 law firm, or has it been Silverstone that was
15 retained, if you can think back to the engagement
16 letter --

17 A. The engagement agreement is -- sorry.

18 Q. That's okay. -- if you can think back
19 to the engagement letter that you failed to
20 produce and we haven't seen?

21 A. The engagement was with Silverstone
22 which specifies me as the person involved as the
23 witness.

24 Q. Had you done any work for Mr. Miller

1 before?

2 A. I have not.

3 Q. Have you done any work for Ms. Andrew
4 before?

5 A. I have not.

6 Q. For any other attorney -- have you done
7 any other work for any other attorney in the Taft
8 law firm?

9 A. Let me think. Not that I recall.

10 Q. Has Silverstone or, to the best of your
11 knowledge, Blackbird done any work for the Taft
12 law firm before?

13 A. I believe it has. One of my partners is
14 a broker/dealer -- arbitration issues.

15 Q. Were you involved at all in that
16 engagement?

17 A. I was not.

18 Q. Do you know whether Taft paid your --
19 the Silverstone Group for that engagement?

20 A. I don't think so.

21 Q. Was it done gratis?

22 A. I don't believe so. It was done as an
23 independent of the firm.

24 Q. A client paid your bill?

1 A. (No response.)

2 Q. When I say "your bill," I mean

3 Silverstone's.

4 A. I believe the bill was paid directly to

5 Mr. Hopper, who was my partner, because that's --

6 but -- and I'm not sure that it was done during

7 the time it was Silverstone, to be honest with

8 you, to clarify.

9 Q. It might have been -- was Hopper

10 associated with Blackbird before --

11 A. Hopper was never associated with

12 Blackbird. Hopper is an attorney by background

13 who has been involved with broker dealerships in

14 -- over the years and is -- is retained as an

15 arbitrator.

16 Q. Are you related to any lawyer at the

17 Taft firm?

18 A. I am not.

19 Q. Do you have any personal or social

20 relationships with any attorneys at the Taft law

21 firm?

22 A. I do not.

23 Q. I understand you're being paid \$350 an

24 hour for the work you've performed in this case?

1 A. Yes.

2 Q. Are you also being paid any expenses?

3 A. I haven't been paid any expenses.

4 Q. Have you incurred any expenses?

5 A. I have not.

6 Q. Have you actually been paid for the time
7 that you've put in for the work you've done to
8 date?

9 A. All the bills that I've submitted have
10 been paid for.

11 Q. And you have been recording your time
12 since the initial contact, since you've actually
13 been engaged by the Taft firm?

14 A. Yes.

15 Q. Were you paid anything for work you did
16 prior to the formal engagement -- and when I say
17 "formal engagement," I mean before both parties
18 actually executed the engagement letter?

19 A. No.

20 Q. There were a couple of your invoices
21 that were produced as, I presume, part of your
22 file that indicated you've worked about 132 hours
23 through July 12, 2013. Does that sound accurate?

24 A. I'll have to take your word for it. It

1 sounds like it could be accurate.

2 Q. We only received invoices through
3 July 12, 2013, probably just based on the timing
4 of the document request.

5 Have you done any work since July 12,
6 2013, to the best of your recollection --

7 A. Yes, I have.

8 Q. -- on this case?

9 A. Yes, I have.

10 (Jesse Ultz entered the room.)

11 MR. SCHEIER: Can we go off the record
12 for a moment?

13 (Deposition Exhibit No. 795 was marked.)

14 Q. (By Mr. Scheier) I'm handing you what's
15 been marked as Deposition Exhibit 795, if you'd
16 take a look at that. I understand this to be an
17 invoice that --

18 MS. ANDREW: Excuse me. Do you have
19 copies?

20 MR. SCHEIER: Yes, sure. See, Marsha, I
21 haven't done this in so long, I forgot protocols.

22 Q. (By Mr. Scheier) Exhibit 795, as I
23 understand it, is an invoice dated July 3, 2013,
24 from Silverstone to Ms. Andrew at the Taft firm

1 reflecting 78 hours' worth of work that you
2 performed, it looks like, if you turn to the
3 second page of the exhibit, in the month of June
4 2013. And I just ask that whether you can verify
5 that that's, in fact, what this document is?

6 A. Yes, it is.

7 Q. Does it accurately reflect all the work
8 that you did beginning, it looks like, June 8th of
9 2013 through June 30, 2013?

10 A. Yes, it does.

11 Q. Did the trust or the Taft law firm pay
12 this invoice?

13 A. Yes, it has.

14 (Deposition Exhibit No. 796 was marked.)

15 Q. Sir, putting before you what I've marked
16 as Exhibit 796, it appears to be a second of two
17 invoices that you produced. You'll see there's a
18 Bates number or document control number with your
19 name on it at the bottom right, Greenberg 54 and
20 Greenberg 363, but I believe they're all related
21 documents.

22 The second page actually is an invoice
23 to Marsha Andrew from Silverstone dated July 15,
24 2013. And if you look at the first page of the

1 document, it appears to be some detail backing up
2 the invoice that is the second page of Exhibit
3 796; is that right?

4 A. That's correct.

5 Q. And does Exhibit 796 accurately reflect
6 the work that you performed as an expert witness
7 for the Antioch Litigation Trust between July 1
8 and July 12, 2013?

9 A. I believe it does.

10 Q. Since July 12, 2013, can you estimate
11 for me how many hours of work you've put in for
12 the Litigation Trust as an expert witness?

13 A. I cannot -- there's been several. I
14 don't know exactly.

15 Q. Have you generated any invoices?

16 A. I have not generated any invoices, not
17 yet.

18 Q. Has the Taft firm paid the invoice
19 that's Exhibit 796, to the best of your knowledge?

20 A. Yes, they have.

21 Q. Do you know how much you've billed Taft
22 or intend to bill the Taft firm for the work
23 you've completed since July 12th?

24 A. I just answered that I don't. I can't

1 estimate the hours, so I don't know what it is.

2 Q. Well, there were two different
3 questions. One was the hours and one was whether
4 you knew the amount that Taft owes you for the
5 work done since July --

6 A. No.

7 Q. Let me finish. -- since July 12?

8 A. No and no.

9 Q. Did you meet with lawyers from Taft to
10 prepare for this deposition?

11 A. I have.

12 Q. When?

13 A. On the 23rd, and prior to that --
14 probably about two weeks prior to that as well.

15 Q. Did you meet, when it was two weeks ago,
16 Ms. Andrew?

17 A. I have.

18 Q. Was Mr. Miller involved in that meeting?

19 A. He was not.

20 Q. Was Emily McNicholas involved in that
21 meeting?

22 A. She was not.

23 Q. Was it just you and Ms. Andrew?

24 A. No. There was Chad Ziepfel as well.

1 Q. Do you understand Chad Ziepfel to be an
2 attorney at the Taft firm?

3 A. I do.

4 Q. How long was that meeting?

5 A. Sorry. Which meeting?

6 Q. The meeting I'm talking about that was
7 two weeks ago. That's the meeting that's --

8 A. Um...

9 Q. -- the topic of the questions right
10 now.

11 A. A few hours, couple hours.
12 Two-and-a-half hours, maybe.

13 Q. How long was the meeting on the 23rd?

14 A. We went from 9 a.m. to after lunch.
15 1:00, 1:30, something.

16 Q. Who was involved in that meeting?

17 A. Marsha Andrew and Chad Ziepfel and
18 myself.

19 Q. If you could turn your attention back to
20 Exhibit 796 on the first page, you seem to
21 describe all your time other than some July 1st
22 time where you met with Taft lawyers as "Drafting
23 opinion and document review." Do you see that?

24 A. I do.

1 Q. A total of 53.5 hours. Do you have any
2 sense of the amount of time you spent drafting the
3 opinion versus document review among the 53.5
4 hours you billed for work up through July 12?

5 A. I do not.

6 Q. In the work that you've done since
7 July 12, was that only related to preparing for
8 this deposition, or have you done other work?

9 A. Just related to preparing for the
10 deposition.

11 (Deposition Exhibit No. 797 was marked.)

12 Q. Sir, I've marked your report as Exhibit
13 797. And I would ask you to verify for the record
14 that Exhibit 797 is, in fact, the written report
15 that you prepared in this matter?

16 A. Yes, it appears to be.

17 Q. I have a narrow focus at this point of
18 the deposition on your report, not getting into
19 anything substantive just yet. And in that
20 regard, I'd like you to, please, turn your
21 attention to page 4 which has the document control
22 number Greenberg 00303 at the bottom right. Do
23 you see that?

24 A. Mm-hmm.

1 Q. It says there that you've reviewed -- I
2 think it's, quote, relevant portions of the
3 testimony of the litigation defendants. Do you
4 see that?

5 A. Yes.

6 Q. Which of the defendants' deposition
7 testimony did you review in this case?

8 A. I believe I read everybody's, everybody
9 that I had in my folder -- in the file that I was
10 given. So certainly the Morgans and a variety of
11 board members and a variety of lawyers that were
12 involved. So whatever was in there, I read.

13 Q. A variety of what?

14 A. There were some lawyers that were in
15 testimony as well, so...

16 Q. You refer oftentimes in your report to,
17 and you said it again, "the Morgans." When you
18 say "the Morgans," who are you referring to?

19 A. Lee Morgan and -- I apologize -- Asha
20 Morgan Moran as well.

21 Q. Were you provided only deposition --
22 portions of deposition transcripts, or were you
23 provided the entire transcript?

24 A. I believe they were the entire

1 transcript.

2 Q. And it says here that you reviewed
3 relevant portions of the testimony. Is that an
4 accurate statement?

5 A. It's an accurate statement meaning that
6 it was the portions of the testimony that I had
7 available to me. It's whatever was there. I
8 don't know that I had all the testimony. I just
9 had the file that I had.

10 Q. I'd asked if the Taft lawyers had only
11 given you portions of the testimony. Maybe I
12 should ask that again.

13 You write in your report that you
14 reviewed relevant portions of the testimony of the
15 litigation defendants. How did you determine what
16 portions were relevant to your report?

17 A. We're dealing with a semantic issue.
18 What I'm saying is that the -- what I had is what
19 I read, and I assumed that those were portions of
20 the testimony that was available in general.

21 Q. Well, I would think someone of your
22 educational background and experience would know
23 whether they are reading an entire transcript or
24 whether you're reading portions of a transcript.

1 A. It appeared to me --

2 Q. If you'd allow me too complete --

3 A. Sure.

4 Q. -- I'd like to know whether your
5 statement in your report that you've read relevant
6 portions of the transcript is accurate or
7 inaccurate?

8 A. Let me state what I did do. I read the
9 testimony that was there. So to the extent that
10 that weren't -- they -- I didn't read parts of the
11 testimony; I read all the testimony that was made
12 available to me.

13 Q. And do you know if only portions of the
14 testimony was made available to you or if all the
15 testimony of each of the litigation defendants was
16 provided to you?

17 A. It appeared to me that whatever I had
18 was whole and not a part -- not a portion.

19 Q. So when you write that you reviewed
20 relevant portions of the testimony, that's
21 inaccurate; you actually read the entire
22 transcript, all the testimony?

23 MS. ANDREW: Objection.

24 A. Yes, I read -- I read the entire

1 testimony that was made available to me.

2 Q. So when you note that the points of view
3 expressed in this document are based on a review
4 of relevant portions of the testimony of the
5 litigation defendants made available to
6 Silverstone by Taft, that's inaccurate because
7 you're now testifying you've actually read the
8 entire transcripts of the litigation
9 defendants; is that correct?

10 MS. ANDREW: Objection.

11 A. I don't believe it's inaccurate in the
12 way that I've described what I've done, so...

13 Q. So I'd like to know how you --

14 A. I disagree with how you're
15 characterizing it.

16 Q. I'd like to know how you chose what
17 portions of any given transcript was relevant.

18 A. I read the transcripts of the testimony
19 that were provided to me. I'm fairly certain that
20 I've read all of the transcripts that were
21 provided to me and that my reference in this
22 document is -- apparently inartful as it was,
23 really refers to the fact that there may be other
24 testimony that I -- was not made available to me.

1 Q. Okay. So you've read the entire
2 transcript of whatever litigation defendant's
3 testimony you were given to the best of your
4 understanding?

5 A. Yes, I did.

6 Q. If you'd think back -- and feel free to
7 refer to them -- to the invoices we looked at that
8 were Exhibits 795 and 796, you've billed time for
9 document review. Does your description "document
10 review" encompass your review of litigation
11 transcripts?

12 A. Yes, and exhibits.

13 Q. As you sit here today, can you, to the
14 best of your recollection, identify for me each of
15 the defendants whose deposition transcript you
16 read?

17 A. I certainly can try.

18 Q. Okay. Let's do it.

19 A. Okay. Well, off the top of my head
20 without seeing each of the names, it's not going
21 to be so easy, but certainly Mrs. Moran,
22 Mr. Morgan, Alan Luce. I'm trying to think of...
23 If I had a list, I certainly could do a lot better
24 job.

1 Q. Do you recall reading Steven
2 Bevelhymer's deposition?

3 A. I do.

4 Q. Nancy Blair's deposition?

5 A. I do.

6 Q. Do you remember that being multiple
7 volumes or a single volume?

8 A. I don't recall.

9 Q. Ben Carlson's deposition?

10 A. I believe so.

11 Q. A deposition by a CRG representative
12 named Epstein?

13 A. Yes.

14 Q. Karen Felix's deposition?

15 A. I don't recall specifically. I
16 certainly remember many memos by her -- about her.

17 Q. Ken Lenoir's deposition?

18 A. Yes.

19 Q. Steve Martin's deposition?

20 A. I don't recall specifically, but
21 probably.

22 Q. Why do you think probably?

23 A. I just don't recall. There was a lot of
24 documents.

1 Q. So you don't know whether it's probable
2 or not; you just don't recall one way or the
3 other?

4 A. I know I read everything that was
5 provided to me; so if it's in there, then I did
6 read it.

7 Q. Marsha Matthews' deposition?

8 A. Yes.

9 Q. Jeanine McLaughlin's deposition?

10 A. I don't recall.

11 Q. Marty Moran's deposition?

12 A. Yes.

13 Q. Jim Northrop's deposition?

14 A. Not sure.

15 Q. Glenn Pollack's deposition?

16 A. Yes.

17 Q. Dennis Sanan's deposition?

18 A. I believe so.

19 Q. Jim Shein's deposition?

20 A. Yes.

21 Q. Steven Spencer's deposition?

22 A. Yes.

23 Q. Malte von Matthiessen's deposition?

24 A. Yes.

1 Q. Did you review, to the best of your
2 knowledge, any other deposition transcripts of any
3 litigation defendant that I didn't review with you
4 just now?

5 A. I don't know all the names off the top
6 of my head.

7 Q. Well, do you recall reading Barry
8 Hoskins' deposition?

9 A. I don't recall, but I certainly recall
10 many, many items and memos and a variety of
11 testimony that involved him, but I don't recall
12 specifically.

13 Q. You didn't produce Barry Hoskins'
14 deposition to us. Does that mean you never
15 received Barry Hoskins' deposition?

16 A. I'm not sure if -- I would need to look
17 at what I have there to tell you whether or not I
18 received it.

19 Q. Well, we asked you for your entire file,
20 and you've produced multiple deposition
21 transcripts. Barry Hoskins' deposition
22 transcript --

23 A. If it's not there --

24 Q. -- was not included in that production.

1 A. Mm-hmm.

2 Q. Does that mean you did not have Barry
3 Hoskins' deposition transcript?

4 A. That would be correct.

5 Q. Kim Lipson-Wilson, do you recall
6 reviewing her transcript?

7 A. I don't.

8 Q. You did not produce it, so I'll assume,
9 then, you've never received it --

10 A. Mm-hmm.

11 Q. -- from the Taft firm, correct?

12 A. That would be correct.

13 Q. Okay. How about Chandra Attiken's
14 deposition that you did not produce to us?

15 A. No, I haven't.

16 Q. You have not read that?

17 A. Hmm-mm.

18 Q. Okay.

19 A. No.

20 Q. You also did not produce Lee Bloom's
21 deposition. Did you read that?

22 A. I did not.

23 Q. Do you know who Lee Bloom is?

24 A. I don't.

1 Q. You also did not produce Marilyn
2 Marchetti's deposition. Did you read that?

3 A. I did not.

4 Q. Do you know who Marilyn Marchetti is?

5 A. I don't recall.

6 Q. You did not produce Helen Morrison's
7 deposition. Did you read that?

8 A. I did not.

9 Q. Do you know who Helen Morrison is?

10 A. No, I do not.

11 Q. Did you read Peter Abrahamson's
12 deposition?

13 A. I don't recall.

14 Q. You didn't produce it. Do you know --

15 A. Then I didn't read it.

16 Q. Do you know who Peter Abrahamson is?

17 A. No, not off the top of my head.

18 Q. You did not produce Dan Holthaus's
19 deposition. Did you read his transcript?

20 A. No.

21 Q. Do you know who Dan Holthaus is?

22 A. Again, not off the top of my head.

23 (Deposition Exhibit No. 798 was marked.)

24 Q. Mr. Greenberg, I've put before you

1 Exhibit 798.

2 A. Mm-hmm.

3 Q. I'll have a few questions, but I'll wait
4 at least until your -- at least the trust counsel
5 receives a copy.

6 Have you seen this document before?

7 A. Yes, I believe so.

8 Q. Do you know who prepared it?

9 A. I presumed it was an attorney at Taft.

10 Q. Did you have an understanding of what
11 this was?

12 A. Generally, yes.

13 Q. And what's your general understanding of
14 the information contained in the document that's
15 Exhibit 798?

16 A. That it was an identification of the
17 individual exhibits that were provided me in the
18 folders that they were in.

19 Q. And does this document identify all the
20 documents that the Taft law firm gave you in
21 addition to the deposition transcripts we just
22 discussed?

23 A. I can't -- I can't say. I don't -- I
24 just don't know.

1 Q. Did you request that Taft give you these
2 documents, or are the documents reflected on this
3 Exhibit 798 that Taft gave you chosen by the Taft
4 lawyers?

5 A. I'm not exactly sure of your question.
6 If you can repeat it, please.

7 Q. Of course. Did you choose what
8 documents the Taft lawyers were going to give you,
9 or did they choose the documents to give you that
10 are reflected on this Exhibit 798?

11 A. Taft chose the documents that were given
12 to me.

13 Q. Do you recall whether after receiving
14 the documents that are reflected on Exhibit 798
15 you asked the Taft lawyers to provide you with
16 additional documents?

17 A. There were some additional documents
18 that I needed to take a look at that were not
19 initially provided to me.

20 Q. And do you recall what prompted you to
21 ask for the additional documents?

22 A. Questions I had concerning certain
23 transaction -- aspects of transactions. In one
24 case, I needed to see the executed lease for the

1 Levimo purchase of the St. Cloud property. But
2 that was generally it and what was provided.

3 Q. When you say that was generally it, is
4 my understanding, then, that the documents you
5 reviewed in conjunction with preparing your report
6 are listed in Exhibit 798 other than the Levimo
7 lease?

8 A. I believe so.

9 Q. Did you look at any documents other than
10 documents provided to you by the Taft lawyers in
11 conjunction with preparing your report?

12 A. I did use some reference documents
13 that -- on a variety of things that I wanted
14 better language for and some clarification.

15 Q. Did you produce those to us as part of
16 your file?

17 A. Everything was in the file. So there
18 were items regarding Article 9 transactions,
19 things like that.

20 Q. Do you recall any specific documents
21 with regard to Article 9 transactions?

22 A. I don't recall exactly. It was -- it
23 was a discussion of the problems of doing Article
24 9 transactions, and I don't remember where exactly

1 -- it came from the net, and it was a lawyer's --
2 a law firm, so a presentation of it.

3 Q. If I recall your resume correctly, you,
4 in one of your -- one of the companies in which
5 you served as an officer or director, participated
6 in an Article 9 transaction, correct?

7 A. Yes.

8 Q. Did you look at any other documents such
9 as articles you had previously written?

10 A. Maybe clarify the question.

11 Q. Sure. In the past, you've published
12 articles on various business investment banking
13 topics, correct?

14 A. Yes.

15 Q. Did you refer to any articles you had
16 previously written in conjunction with preparing
17 your report?

18 A. No.

19 Q. Have you produced to us, to the best of
20 your knowledge, in response to a subpoena we sent
21 you, every document that you reviewed and
22 considered in preparing your expert report in this
23 case?

24 A. I believe I have.

1 Q. If you would, please, turn back to your
2 report --

3 A. Mm-hmm.

4 Q. -- which is Exhibit 797, and I'd like
5 you to turn to page 5 --

6 A. Okay.

7 Q. -- and focus in particular on section
8 Roman 4, "Note on Opinion Contents." Do you see
9 that?

10 A. I do.

11 Q. The last sentence of that particular
12 section refers to various reports and
13 communications made available to Silverstone. Do
14 you see that?

15 A. I do.

16 Q. There's nothing outside of what we see
17 in Exhibit 798 and the Levimo lease that you're
18 referencing with regard to various reports and
19 communications made available to Silverstone,
20 correct?

21 A. Please restate the question.

22 Q. Sure. Other than the documents
23 identified in -- your reference to various reports
24 and communications made available to Silverstone

1 references the documents that are identified in
2 Exhibit 798 and the Levimo lease, correct?

3 A. Yes.

4 Q. I also wanted to ask you a question in
5 regard to another reference in that particular
6 section, section 4 of your report. If you'd
7 follow, I'll read the first sentence of that
8 section.

9 It says "The following opinion does not
10 attempt to restate nor does it attempt to sequence
11 chronologically all the issues and events that
12 impacted The Antioch Company in the five years
13 from the time the tender offer and wholly-owned
14 ESOP transaction occurred in 2003," period. Did I
15 read that correctly?

16 A. Yes, I believe you have.

17 Q. Did you review the tender offer in
18 conjunction with your report?

19 A. The actual tender offer, no. What I
20 reviewed --

21 Q. That's my question.

22 A. The answer's no.

23 Q. Did you review the actual tender offer
24 in conjunction with your report?

1 A. The answer's no.

2 Q. Did you ask the Taft law firm to provide
3 you with the tender offer?

4 A. I did not.

5 Q. I also noted in that section you refer
6 to ESOP transactions. Do you see that?

7 A. Yes.

8 Q. Was it your understanding that there was
9 more than a single transaction with regard to the
10 ESOP in 2003?

11 A. No. It's a typo.

12 Q. Okay. I'd like to refer your attention
13 again to Exhibit 798, which is the list of the
14 deposition exhibits that the Taft firm provided to
15 you. I noted on here with some interest that the
16 only document that was dated before 2006 was the
17 very first one, Exhibit 2. Do you see that?

18 A. Mm-hmm.

19 Q. You do?

20 A. Yes, I do see that.

21 Q. All right. Do you recall what Exhibit 2
22 was?

23 A. I don't.

24 Q. Well, other than Exhibit 2, the only

1 other document dated before 2006 that you produced
2 was a valuation report by a company known as
3 Business Valuations Inc. Do you recall that?

4 A. I do.

5 Q. Did you review any documents other than
6 those two documents -- the BVI valuation and
7 Deposition Exhibit 2 -- that were dated prior to
8 2006?

9 A. I'm thinking -- just thinking what the
10 bankruptcy documents were and the dates on those.

11 Q. The bankruptcy documents would have been
12 in 2008.

13 A. They would have been 2008. The answer
14 is no.

15 MR. SCHEIER: Could we go off the record
16 for a second?

17 (Off-the-record discussion.)

18 Q. (By Mr. Scheier) Sir, I'm going to hand
19 you what's been marked in a prior deposition as
20 Exhibit 2.

21 A. Mm-hmm.

22 Q. Do you recall looking at this document
23 in conjunction with preparing your report?

24 A. I believe I do. It certainly looks very

1 familiar to me. Certainly some of the -- the --
2 yeah, some of the schedules and some of the bullet
3 points look very familiar to me.

4 Q. I'd like you to look through it because
5 I have a couple questions about the document.

6 A. (Examining document.) Yeah. Okay.

7 Q. Did you rely on this document in whole
8 or in part in preparing your report?

9 A. I certainly recall looking at it.

10 Q. Do you recall whether you relied on it
11 in writing any portion of your report?

12 A. It's -- that's hard to say. There's
13 details in here that have been picked up in other
14 summaries of the transaction that I've used from a
15 variety of sources including the investment
16 bankers and the valuation firms, so it's hard to
17 say. You know, I -- to the extent that it may
18 have informed what I've done, that's certainly
19 possible, but I can't say directly.

20 Q. You do recall looking at the document?

21 A. I do.

22 Q. Do you know the origin of this document?

23 A. Not offhand. I'm sure if you give me a
24 little time I'd find out, but...

1 Q. Did you think it important to find out
2 as you were looking at it in preparing your
3 report?

4 A. I certainly having looked at it --
5 believing that I've looked at it -- certainly read
6 through, and it was certainly part of my -- you
7 know, would have -- you know, certainly could have
8 informed some of my thinking about what's going on
9 there, but...

10 Q. That wasn't my question. My question
11 was whether you knew the origin of this document;
12 and you said that if I gave you some time, you
13 could probably find out. And in response, I asked
14 whether while you were preparing your report, if
15 you thought it was not important to find out what
16 the origin of this document was.

17 A. In looking at it and trying to recall
18 what I was thinking when I did look at it, I
19 certainly believed it was -- the origin was the
20 company itself. The origin was -- it originated
21 due to the desire to do this transaction, the ESOP
22 -- hundred percent ESOP owned transaction --
23 tender offer transaction. So I certainly
24 understood that in that context.

1 Q. That's just a guess, though, isn't it,
2 sir? You don't know --

3 A. Well, I don't know that it's a guess.
4 You're -- I don't think I'm guessing.

5 Q. Well, I'll represent to you I don't know
6 who generated this document. Can you tell me who
7 prepared this document?

8 A. It looks -- when -- I'm trying to
9 remember what I remembered at the time -- what I
10 thought at the time, which is very difficult to do
11 and probably something I shouldn't do. But
12 certainly looking at it, it looks like it was --
13 that it was a document that was set up to present
14 possibly to the board at the time or to the
15 company itself directly.

16 Q. You don't know that for sure, though?

17 A. No, I don't know that for sure.

18 Q. And, in fact, you don't know what the
19 origin of this document is?

20 A. I don't know who wrote the document.

21 Q. And you don't know whether it's a
22 company document or it was made by a third party?

23 A. I certainly assumed it was a company
24 document.

1 Q. But that's an assumption you made; you
2 don't know?

3 A. That's correct.

4 Q. Did you read the deposition where this
5 document was used?

6 A. (No response.)

7 Q. I'll represent to you it's a deposition
8 of a Fifth Third employee -- a Fifth Third Bank
9 employee. It's the only deposition where this was
10 used.

11 A. I certainly don't recall reading it.

12 Q. Do you know -- have you verified the
13 accuracy of any representations or remarks made in
14 the document that's Deposition Exhibit 2?

15 A. No.

16 Q. And you don't have any knowledge of why
17 this document was prepared by whoever prepared
18 it; is that right?

19 A. I have no direct knowledge of who it was
20 -- who prepared it, no, of course not.

21 Q. You can only guess?

22 A. Of course.

23 Q. The other document we discussed that was
24 generated prior to 2006 was the Business

1 Valuations Incorporated --

2 A. Yeah.

3 Q. -- valuation. Do you recall that?

4 A. Yes.

5 Q. Did you rely on any part of that in
6 drafting your report?

7 A. I did.

8 Q. Did you rely on that in forming your
9 opinions?

10 A. It certainly was constituent to my -- to
11 my opinion about the valuation in the tender
12 offer.

13 Q. The draft of the BVI report that you
14 produced is missing some pages. Do you know why?

15 A. I don't.

16 Q. Did you remove those pages?

17 A. I don't believe so.

18 Q. Did Taft tell you that they had removed
19 certain pages from the BVI exhibit?

20 A. Not that I recall, no.

21 Q. In preparing your report and formulating
22 your opinions in this case, sir, did you look at
23 an expert report that Taft commissioned by a
24 lawyer named Barbara Wagner?

1 A. I did.

2 Q. Did you ask Taft to produce Ms. Wagner's
3 report to you?

4 A. I don't recall that I asked. I
5 certainly -- certainly received it.

6 (Deposition Exhibit No. 799 was marked.)

7 Q. Sir, I'm handing you what's been marked
8 as Exhibit 799. I understand that to be the
9 expert report prepared by a Barbara Wagner.

10 A. Mm-hmm.

11 Q. And I'll ask you to verify that you had
12 this in your possession and reviewed it and relied
13 upon it in preparing your written report and
14 opinions in this case.

15 A. That's a complex question. If you can,
16 restate specific questions. You asked me about
17 three questions in a row.

18 Q. You're right. I think lawyers call that
19 a compound question.

20 A. Yeah, I was going to call it -- but I
21 didn't want to be pretentious.

22 Q. You can. I wouldn't consider it
23 pretentious. I think it's taking a pretty good
24 stab at talking like a lawyer.

1 Could you verify that Exhibit 799 is the
2 report by Ms. Wagner that you had in your
3 possession at the time that you were preparing
4 your report and formulating your opinions that
5 you're going to give in this case?

6 A. I did not have this report prior to my
7 drafting the opinion that I -- that I did draft.

8 Q. When did you receive Ms. Wagner's
9 report?

10 A. Subsequent to my final draft that was
11 submitted to -- to the Taft law firm.

12 Q. I might be misremembering my question,
13 but I asked whether you relied upon Ms. Wagner's
14 report in preparing your written report and
15 opinion, and I thought you had answered yes.

16 A. No. The answer would be no.

17 Q. Did you review this report subsequent to
18 drafting your report?

19 A. Yes.

20 Q. Did anything in this report lead you to
21 change the written report that has been produced
22 to all the defendants in this case?

23 A. No.

24 Q. Why did you review Ms. Wagner's report?

1 A. Curiosity. Having read the documents
2 and knowing the case, I wanted to see what her --
3 what she had to say.

4 Q. Anything Ms. Wagner said has no -- you
5 didn't rely upon whatsoever either in writing your
6 report or formulating your opinions; is that
7 correct?

8 A. I believe I answered that already, yes.

9 Q. And has anything you read in this report
10 led you to change your opinion or want to edit
11 anything you've written in your report?

12 A. No.

13 Q. Shifting gears a little bit, I want to
14 just talk briefly about a group that you worked
15 for prior to your affiliation with Silverstone
16 called LudlowWard.

17 A. Yes.

18 Q. You were a managing partner there; is
19 that correct?

20 A. Yeah. I was one of three owners of the
21 firm.

22 Q. So you had an equity interest in that
23 firm?

24 A. I did.

1 Q. And what were the circumstances behind
2 you leaving LudlowWard Capital?

3 A. Very briefly and very accurately, we
4 were going to 2008. The capital markets had
5 become very difficult. I did a lot of work in
6 restructuring and bankruptcy-related matters and
7 had a fairly brisk practice in that even during
8 that period.

9 One of the partners, Madeline Ludlow,
10 was looking at leaving, and most of the clients at
11 the time -- probably all of them at the time were
12 mine, and it just didn't make sense to stay in
13 that environment for me at that point to do it.

14 Q. Who were the three partners at
15 LudlowWard?

16 A. There was Madeline Ludlow, Kevin Ward,
17 and Mark Greenberg.

18 Q. And does that entity still exist?

19 A. No.

20 Q. LudlowWard was engaged by The Antioch
21 Company's publishing division in 2007; is that
22 correct?

23 A. Yes.

24 Q. Were you LudlowWard's lead on that

1 particular engagement?

2 A. I was not the lead on it.

3 Q. Who was the lead?

4 A. Madeline Ludlow.

5 Q. Did you do some work in that regard?

6 A. I did, absolutely.

7 Q. Did you retain any files from that
8 engagement?

9 A. I have not retained any files, no.

10 Q. Did you retain any of your LudlowWard
11 files?

12 A. I have certain files that I worked on
13 when I was at LudlowWard that I certainly kept,
14 but this was a transaction -- it was a small
15 transaction, and it was one that I didn't lead,
16 and so I just didn't keep any of the files.

17 Q. Are you aware that we asked Ms. Andrew
18 for the Antioch file of LudlowWard?

19 A. Yes, I am.

20 Q. And she asked you to take a look to see
21 whether you could find that?

22 A. Yes, she did.

23 Q. Did you make an effort?

24 A. I did, indeed.

1 Q. What did you do?

2 A. I looked through whatever I had and
3 didn't find anything in the file.

4 Q. I'd understood you were going to try to
5 contact your former partners at LudlowWard. Did
6 you do that?

7 A. I have.

8 Q. Yes. How did they respond when you
9 requested the Antioch Company file?

10 A. Sure. Madeline did not take any files
11 with her; and Kevin Ward, who's now the regional
12 president for Chase, said he has files and he was
13 on vacation and, when he got back, that he would
14 -- he would look to see what was there.

15 Q. And where is Mr. Ward located these
16 days?

17 A. He's in Cincinnati.

18 Q. And with what company?

19 A. He's with -- he's the regional president
20 for Chase -- Chase Bank.

21 Q. Do you know where his office is?

22 A. Yeah. It's in Kenwood. Mm-hmm.

23 Q. I note with some interest that as part
24 of the Antioch transaction where you played a role

1 in 2007, you worked with a defendant in this case,
2 Kimberly Lipson-Wilson. Do you recall that?

3 A. Yes, I do.

4 Q. In your dealings with Ms. Wilson, did
5 you find her to be competent?

6 A. Yes.

7 Q. And did you find her to be professional?

8 A. I did.

9 Q. Did you find her to be honest?

10 A. Yes.

11 Q. Did you find her to be forthcoming?

12 A. Yes.

13 Q. Did you find her to be prepared?

14 A. If I recall, sure. I certainly didn't
15 find her unprepared.

16 Q. I wanted to talk a little bit now about
17 your general background.

18 A. Sure.

19 Q. I understand you graduated from Boston
20 University in '75?

21 A. Yes.

22 Q. And you obtained a bachelor's degree in
23 philosophy, logic, and mathematics; is that
24 correct?

1 A. (Witness nodded.)

2 Q. Yes?

3 A. Yes.

4 Q. You shook your head yes, and Kelly can't
5 record that, so you'll have to respond as you
6 did. Any post-graduate degrees?

7 A. No.

8 Q. Any other post-graduate education that
9 didn't result in a degree? And what I'm referring
10 to is university education.

11 A. No.

12 Q. Do you hold any business-related
13 licenses?

14 A. I don't.

15 Q. Do you hold any certifications from
16 professional or business organizations?

17 A. I do not.

18 Q. Are you a member any of professional or
19 business organizations?

20 A. I am.

21 Q. Can you list those for me?

22 A. Yeah. Association for Corporate Growth,
23 and the Turnaround Association, the local TARC in
24 Cincinnati.

1 Q. TARC, you called it?

2 A. The -- I think that's it.

3 THE WITNESS: Tim, do I have that right?

4 Q. Well, that's okay. I don't really need
5 Tim's --

6 A. Turnaround Association.

7 Q. -- testimony here.

8 A. It's a -- it's a restructuring,
9 turnaround association.

10 Q. See, now I might have to reopen Tim's
11 deposition and ask him that question under oath.

12 A. Well, he didn't answer.

13 Q. You probably don't want to address him
14 because you're going to cause problems. Anyway --

15 A. I won't do that again.

16 Q. Okay. Do you know -- assuming TARC is
17 correct, do you know what it's an acronym for?

18 A. It's a -- it's the -- it's a turnaround,
19 restructuring association. That's about as far as
20 I'm going to get accurately at this point.

21 Q. Okay. Fair enough.

22 A. Mm-hmm.

23 Q. Are you a member of any other
24 professional or business organizations?

1 A. No, I'm not.

2 Q. Do you hold any leadership roles in
3 either of the groups you just identified?

4 A. Yes, in ACG, Association for Corporate
5 Growth, I'm on the board of directors beginning
6 this month. September, actually.

7 Q. What is the professional business
8 interest of Association for Corporate Growth?

9 A. It's primarily transactions, M&A
10 transactions, funding transactions. It's the deal
11 community for this region, and then many others --
12 it's a national organization. The Cincinnati
13 chapter is a very active chapter.

14 Q. Are you active in the national chapter?

15 A. I'm not.

16 Q. Have you ever been active in the
17 national chapter?

18 A. I have never been active in the national
19 chapter.

20 Q. I want to talk a little bit about ESOPs.
21 Do you know what that acronym stands for?

22 A. I sure do.

23 Q. What?

24 A. It's an Employee Stock Ownership Plan.

1 Q. Well, let me ask you this: Do you have
2 any experience with ESOPs?

3 A. Yes, I have.

4 Q. Can you describe that for me?

5 A. Yeah. I've worked in M&A transaction
6 work with ESOPs. I'm currently involved with a
7 management buyout where the ESOP is -- where the
8 company's owned by public shareholders, ESOP, and
9 insiders. I'm trying to think other times when
10 I've been involved. I have other clients that
11 I've advised that are ESOPs.

12 Q. What I'd like you to do, please, is
13 identify for me each and every company that you've
14 been involved with, either as an advisor or as a
15 manager, that use an ESOP as the retirement
16 vehicle for its employees.

17 A. Some of these are -- I'm under
18 confidentiality agreements, and so I'm going to
19 defer to counsel here whether or not I can bring
20 those up.

21 Q. Please?

22 A. I have some that are under
23 confidentiality.

24 Q. I don't want you to breach any

1 confidentiality, so why don't we start with the
2 ones that aren't.

3 A. Sure. There's a company called Saturday
4 Night Lights that I've looked at. There's --

5 Q. Hold on. I'm going to ask you follow-up
6 questions after you identify each one. So
7 Saturday Night Lights?

8 A. Light, I think, yeah.

9 Q. Saturday Night Light.

10 A. Yeah.

11 Q. What type of company is that?

12 A. They produce various products -- cough
13 products for bathrooms, private label and under
14 their own label.

15 Q. How many employees do they have?

16 A. Geez, I don't know. A hundred.

17 Q. How many of those a hundred employees
18 are in the ESOP?

19 A. It's all -- it's all -- it's a wholly-
20 owned ESOP.

21 Q. And what did you do in regard to
22 Saturday Night Light?

23 A. Just provided advisory work on looking
24 at potential M&A work. It was very episodic.

1 Q. Would you have supplied them any advice
2 with regard to ESOP matters?

3 A. No.

4 Q. Other than Saturday Night Light, any
5 other companies?

6 A. I did some work several years back for
7 an ESOP-owned company that had a -- that were an
8 unsecured creditor in a bankruptcy matter.

9 Q. And what company is that?

10 A. It's a food distribution company. For
11 the life of me, I can't remember. They just
12 resold. It'll come to me. I just don't have it
13 off the top of my head. It's a local company.

14 Q. How many employees?

15 A. I want to say around a hundred.

16 Q. How many are in the ESOP?

17 A. It was a wholly-owned ESOP.

18 Q. Do you recall what the value of the
19 shares were in that ESOP?

20 A. I don't offhand.

21 Q. Do you recall what the value of the
22 shares were in the Saturday Night Light ESOP?

23 A. I don't.

24 Q. Did you provide this food distribution

1 company with any advice with regard to the ESOP?

2 A. I did not.

3 Q. Do you feel yourself competent to give
4 any advice with regard to an ESOP?

5 A. I do.

6 Q. Okay. How so?

7 A. I understand how they're -- how they're
8 constructed. I understand the tax issues, I
9 think, relatively well. I understand why you
10 would have an ESOP and why you wouldn't. Yeah, I
11 think I have a fairly good knowledge of ESOPs.

12 Q. Have you ever advised a company with
13 regard to management of their ESOP?

14 A. No, I've never.

15 Q. Are you a member of any ESOP
16 association?

17 A. I am not.

18 Q. Have you ever published any articles
19 about an ESOP?

20 A. I have not.

21 Q. Have you ever made a presentation to a
22 business or professional organization about an
23 ESOP?

24 A. No.

1 Q. Have you ever been a member of an ESOP?

2 A. No.

3 Q. Did you review any scholarly articles or
4 treatises about ESOPs in preparing your report or
5 formulating your opinion in this case?

6 A. Apart from looking at specific things on
7 409(p) regulations, I don't recall anything other
8 than that.

9 Q. And what did you look at with regard to
10 409(p) regulations?

11 A. Really just to look at the S Corp issue
12 and -- and the -- and the -- just how the -- how
13 the -- how the rule works relative to S Corps and
14 -- and creating -- the potential for creating a --
15 an unlawful tax shelter and what some of the
16 consequences are.

17 Q. Did you ever make any presentations to
18 an ESOP association or interest group?

19 A. I never have.

20 Q. Have you ever performed a valuation of
21 an ESOP company stock?

22 A. No.

23 Q. Have you ever performed a valuation of
24 an S Corporation that had an ESOP component?

1 A. We're in the process of that now, but
2 the answer is before that, no.

3 Q. And what company is that now that --

4 A. It's a company that I -- that's under
5 confidentiality.

6 Q. Please allow me to finish my question.
7 It's very frustrating for the court reporter when
8 you don't.

9 Can you identify the company whose stock
10 you're valuing now that's an S Corp with an ESOP
11 component?

12 A. I can't.

13 Q. Is that a Silverstone engagement?

14 A. Yes.

15 Q. Are you the lead on that engagement?

16 A. Yes, I am.

17 Q. Are you personally doing the valuation?

18 A. I personally would be leading the
19 valuation.

20 Q. Are they aware that you've never done a
21 valuation before of an S Corporation stock who
22 some of which is held in an ESOP?

23 A. Oh, sure. Yes.

24 Q. Is that corporate stock owned a hundred

1 percent by the ESOP?

2 A. No.

3 Q. Have you ever valued the shares of a
4 company all of whose stock is held in an ESOP?

5 A. No.

6 Q. Have you served or prepared a repurchase
7 obligation study in regard to ESOP stock?

8 A. No.

9 Q. Have you ever seen a repurchase
10 obligation study with regard to ESOP stock?

11 A. No.

12 Q. Did you look at any repurchase
13 obligation studies that were prepared for The
14 Antioch Company any time between 2002 and 2007?

15 A. I didn't look at any studies.

16 Q. Have you read any literature in
17 preparing your report or formulating your opinions
18 in this case about repurchase liability arising
19 from ESOPs?

20 A. Certainly not in preparing for the
21 report, no. The answer would be no.

22 Q. Have you ever read any literature about
23 repurchase liability arising from ESOPs aside from
24 preparing for this case?

1 A. No.

2 Q. Okay.

3 A. Not that I recall.

4 Q. Have you ever advised a company about
5 managing its ESOP repurchase liabilities?

6 A. No.

7 Q. Are you aware that within the ESOP
8 community, the repurchase obligation of a company
9 are an off balance sheet accounting item?

10 A. Am I aware that that's an off -- well,
11 it's... Yeah. It's certainly not on the
12 Antioch's balance sheet.

13 Q. Well, that wasn't my question.

14 A. Well, the answer --

15 Q. The question you wanted to answer was
16 whether it was an off balance sheet item on the
17 Antioch balance sheet. What I'm asking you is
18 generally if you're aware that in the ESOP
19 community, a company's repurchase obligation is
20 considered an off balance sheet liability?

21 A. I'm not aware.

22 Q. Okay. Did you review any of Prairie
23 Capital Advisors' valuations of The Antioch
24 Company or its ESOP prepared between 2003 and

1 2007?

2 A. Yes.

3 Q. Which ones?

4 A. I'm trying to think of the ones. There
5 was one that... I certainly reviewed them. I'm
6 trying to figure what period they were, whether it
7 was around the time of Evolve getting involved or
8 Reliance or -- there were -- I don't recall
9 specifically, but I certainly remember looking.

10 Q. Do you recall reviewing Prairie
11 Capital's valuation of Antioch stock as of
12 December 31, 2003?

13 A. That's the 889 a share?

14 Q. No. You've got that wrong in your
15 report. It's actually 894 a share.

16 A. Oh, I reversed it. Sorry.

17 Q. I'm sorry?

18 A. I'm trying to think -- I -- if I --
19 where I picked that up from or whether I picked it
20 up directly from the Prairie Capital review. I
21 think I probably picked it up from -- from some
22 testimony or from other exhibits.

23 Q. You don't believe you reviewed the
24 Prairie Capital valuation of the Antioch Company

1 stock as of December 31st, 2003?

2 A. I don't. If it was in there, I
3 certainly reviewed it, and I -- but I don't recall
4 specifically reviewing it.

5 Q. Prior to your engagement by Taft in this
6 case to serve as an expert witness, were you
7 familiar with Prairie Capital?

8 A. Oh, sure.

9 Q. Do you know anyone at Prairie Capital?

10 A. I don't.

11 Q. Have you ever spoken to a gentleman by
12 the name of Bob Gross?

13 A. Not that I recall.

14 Q. Did you attempt to reach out to Prairie
15 Capital to discuss their valuations of The Antioch
16 Company in this case in conjunction with preparing
17 your report or formulating your opinions?

18 A. No.

19 Q. Do you have any experience, sir, in
20 advising an ESOP trustee who has discretion to
21 vote the majority of company shares?

22 A. No.

23 Q. Do you have any experience in a
24 transaction in advising a trustee -- an ESOP

1 trustee in regard to a transaction where all of
2 the stock is owned by the ESOP?

3 A. No.

4 Q. Do you have any experience in advising a
5 company whose ESOP trustee controls the majority
6 of the stock?

7 A. Please restate the question.

8 Q. Do you have any experience advising a
9 company whose ESOP trustee controls the majority
10 of the company's stock?

11 A. No.

12 Q. Are you aware that in the 2007/2008 time
13 frame, the Antioch trustee controlled
14 approximately 85 percent of the company's stock?

15 A. Yes, I am.

16 Q. In forming your opinions in this case
17 and in writing your report, did you take into
18 account that the Antioch board in 2007 and 2008
19 could not execute a transaction without the
20 approval of the ESOP trustee?

21 A. Fully aware.

22 Q. Did you take that into account in
23 preparing your report --

24 A. I did.

1 Q. -- that fact?

2 A. Mm-hmm.

3 Q. Okay. Have you ever advised a corporate
4 board or an ESOP trustee or other fiduciary about
5 Internal Revenue Code 409(p)?

6 A. No.

7 Q. Have you ever made any presentations to
8 any special interest groups or business
9 associations about Internal Revenue Code Section
10 409(p)?

11 A. I have not.

12 Q. Did you ever publish any materials
13 related to Section 409(p)?

14 A. I have not, no.

15 Q. Did you review any articles or treatises
16 in regard to Internal Revenue Code 409(p) in
17 conjunction with preparing your report here?

18 A. I did.

19 Q. What articles or treatises did you
20 review?

21 A. It was a review of 409(p), and it was
22 something that I found online from a law firm,
23 just to get my -- get calibrated. But I don't --
24 I don't believe I downloaded it; I just kind of

1 made sure I understood what was there.

2 Q. Did you produce that to us?

3 A. If it's not in there, then I didn't, and
4 I didn't download it.

5 Q. I'd like you to download that and
6 produce that to us when you -- at your earliest
7 opportunity, please.

8 A. Yeah. I'll try to find it.

9 Q. Okay. Very well. Had you ever heard of
10 409(p) -- Internal Revenue Code Section --

11 A. Yes.

12 Q. Had you ever heard of Internal Revenue
13 Code Section 409(p) prior to your engagement by
14 Taft in this case?

15 A. Well, I believe I have.

16 Q. In what context did you hear it?

17 A. Well, I've dealt with a variety of --
18 you know, I deal with a lot of tax issues, and I'm
19 -- I believe I have. I don't recall specifically,
20 but...

21 Q. No specific recollection?

22 A. No. But when it was said, I knew what
23 it was, not all the details of it, and that's why
24 I looked.

1 Q. What is it?

2 A. Well, it's basically there to prevent an
3 ESOP from becoming a tax shelter, and it's a way
4 of regulating that process and making sure there's
5 balance between -- in terms of total ownership and
6 concentrations of ownership.

7 Q. Moving on from ESOPs, do you hold any
8 commercial real estate licenses?

9 A. I don't.

10 Q. Are you a commercial real estate broker?

11 A. I am not.

12 Q. Are you a member of any commercial real
13 estate associations or professional organizations?

14 A. No.

15 Q. Have you authored any publications
16 regarding commercial real estate leases?

17 A. No.

18 Q. Have you reviewed any scholarship or
19 treatises regarding commercial real estate leases
20 in conjunction with preparing your report or
21 formulating your opinions that you intend to give
22 in this case?

23 A. I haven't, but I deal with a whole lot
24 of leases.

1 Q. That wasn't my question. You need --

2 A. I realize that.

3 Q. Well, you need to just answer the
4 question I ask.

5 A. I did answer.

6 Q. You didn't, so here's the question: Did
7 you review any scholarship or treatises regarding
8 commercial real estate leases in conjunction with
9 the report you prepared in this case or the
10 opinions you've formulated to give in this case?

11 A. I haven't.

12 Q. Did you review any commercial real
13 estate leases other than the one at issue in this
14 case in conjunction with preparing your report or
15 formulating your opinions?

16 A. So may I restate what I think you just
17 asked me?

18 Q. No. I'll restate it if you didn't --

19 A. Please restate it.

20 Q. Did you review any commercial real
21 estate leases, actual leases, other than the
22 Levimo lease at issue in this case in conjunction
23 with preparing your report or formulating the
24 opinions you're going to give in this case?

1 A. The only other lease that I did look at
2 was the original Carey lease and then the Levimo
3 lease.

4 Q. Other than the original Carey lease and
5 the Levimo lease, did you look at any other
6 commercial real estate leases in conjunction with
7 preparing your report or formulating your
8 opinions?

9 A. No.

10 Q. Do you have any familiarity with the
11 commercial real estate lease market in St. Cloud,
12 Minnesota, in 2007?

13 A. No, I don't.

14 Q. Have you ever been involved with a
15 company that has entered into a commercial real
16 estate lease in the state of Minnesota?

17 A. I'm trying to think. Not that I recall.

18 Q. Switching topics. With regard to any of
19 your prior experience that's referenced in your CV
20 and in your report, did you deal with any
21 companies that used the party plan method of
22 direct sales to move their product?

23 A. I'm trying to think. Certainly not as
24 an intermediary advisor, not that I recall. No.

1 No. The answer is no.

2 Q. The answer to the question is no?

3 A. Yes.

4 Q. What is your understanding of the party
5 plan method of direct sales, if you have one?

6 A. Well, I do have one.

7 Q. Okay.

8 A. It's -- it's a network sales
9 organization. It creates parties where it sells
10 its products. And they're sales consultants that
11 run the parties, and they also then recruit other
12 sales consultants and -- and on and on. And the
13 products -- they're independent of the company.
14 They're -- they're acting as essentially
15 commissioned salespeople of sorts, and so...

16 Q. Did you understand Creative Memories
17 used that particular business model?

18 A. I did.

19 Q. Did you ever publish any articles with
20 regard to direct sales organizations?

21 A. No.

22 Q. Did you ever publish any articles with
23 regard to the party planning method of direct
24 sales?

1 A. No.

2 Q. Did you review any scholarship or
3 treatises in regard to the direct selling model?

4 A. No.

5 Q. Did you review any articles or treatises
6 in regard to the party planning method of direct
7 sales in conjunction with preparing your report or
8 formulating your opinions?

9 A. No.

10 Q. Have you ever been an officer or
11 director of a direct sales company?

12 A. I have not.

13 Q. Do you have any prior experience at all
14 with the party plan method of selling a company's
15 products?

16 A. No.

17 Q. Have you ever performed a valuation of a
18 company that uses direct sales?

19 A. No.

20 Q. Have you ever performed a valuation of a
21 company that uses a network of consultants through
22 a party planning network?

23 A. No.

24 Q. Do you have any prior experience with

1 companies in what I'll call the scrapbooking
2 industry?

3 A. Apart from Antioch, no.

4 Q. And what is your prior experience with
5 Antioch other -- when you refer to Antioch, are
6 you referring to your engagement as an expert in
7 this case?

8 A. I'm referring to my previous engagement
9 as an investment banker to sell their publishing
10 group.

11 Q. Their publishing group did not use
12 the --

13 A. That's correct.

14 Q. What was my question going to be?

15 A. You tell me.

16 Q. That's why you need to wait.

17 The publishing group did not use the
18 direct sales method, correct?

19 A. No.

20 Q. Okay. And the direct -- and the
21 publishing group that you were involved with back
22 in 2007 did not use party planning as a means to
23 sell its product, correct?

24 A. That's correct.

1 Q. Do you have any prior experience at all
2 with companies in the memory preservation or photo
3 preservation industries?

4 A. No, I have not.

5 Q. And did you ever publish any articles
6 about either industry?

7 A. I have not.

8 Q. Did you ever publish any articles about
9 scrapbooking or the scrapbooking industry?

10 A. No, I haven't.

11 Q. Do you belong to any professional
12 associations or business associations that deal
13 with scrap -- the scrapbooking industry or memory
14 preservation?

15 A. No.

16 Q. Did you review any scholarly articles or
17 publications about the scrapbooking industry or
18 the memory preservation industry in preparing your
19 report in this case or in formulating your
20 opinions?

21 A. No, I did not.

22 Q. In preparing your report and formulating
23 your opinions in this case, Mr. Greenberg, did you
24 take a look at any of Creative Memories'

1 competitors in the 2003 to 2008 time frame in
2 regard to their financial performance?

3 A. I did not.

4 Q. In preparing your report and formulating
5 your opinion, sir, did you take into account the
6 -- whether the Internet had any effect on Creative
7 Memories' product lines and marketing model?

8 A. I specifically mentioned that that was
9 one of the -- one of the -- one of the impacts
10 that they were -- they were experiencing, so...

11 Q. Any other market developments that you
12 considered in formulating your report or in
13 preparing your opinions that affected Creative
14 Memories' financial performance between 2003 and
15 2008?

16 A. I'm not really sure what your question
17 is.

18 Q. Okay. Other than the growth of the
19 Internet during that period, did you consider any
20 other market developments that impacted Creative
21 Memories' sales between 2003 and 2008?

22 A. The only things that were considered
23 were the statements made by the defendants and
24 references that were in various exhibits by the

1 investment bankers, in particular, but also the
2 evaluators in respect to retail competition,
3 Internet competition, and digital competition in
4 general.

5 Q. Did you make any effort in preparing
6 your report or formulating your opinions to
7 determine how those market forces impacted the
8 scrapbooking and memory preservation industry
9 generally?

10 A. No.

11 Q. Did you review any treatises or
12 scholarship on the effect of those market forces
13 on scrapbooking or memory preservation?

14 A. I did not.

15 Q. Did you, in preparing your report or
16 formulating your opinions, consider the effect of
17 the emerging photo sharing technologies on
18 Creative Memories' core business of scrapbooking?

19 A. I did not.

20 Q. What about online photo storage?

21 A. I did not.

22 Q. Did you consider competition -- the
23 increasing competition in the marketplace for
24 memory preservation that Creative Memories was

1 facing from a company called Shutterfly?

2 A. Only to the extent that it was discussed
3 in the -- in the various exhibits and in
4 testimony.

5 Q. Didn't do any independent investigation
6 of that?

7 A. No.

8 Q. How about Snapfish; are you familiar
9 with --

10 A. I am. I am familiar with who they are
11 but only to the extent it was specifically
12 referred to in the -- in the documents.

13 Q. Did you take into account, in preparing
14 your report or formulating your opinions, the
15 effect that Google's Picaso Web Albums had on
16 Creative Memories' business?

17 A. I didn't. And I don't recall
18 specifically that being referred to, although it
19 may have been.

20 Q. How about the effect that a product like
21 Flickr -- Internet-based product like Flickr had
22 on Creative Memories' scrapbooking business
23 between 2003 and 2008?

24 A. Same answer as last. Only to the extent

1 it was in there, but I don't recall that it was.

2 Q. And if it was in there, did you just
3 note it was in the deposition transcripts, or did
4 you actually --

5 A. I noted --

6 Q. -- factor --

7 A. Just -- just noted that that was there.
8 Sorry.

9 Q. Did you actually factor it into
10 formulating your opinions and in your report?
11 Because I didn't see any reference to any of that
12 in your report.

13 A. I did not concern myself specifically
14 with those issues except to note that they were
15 there, and they were creating competitive pressure
16 for the company.

17 Q. So when you say "those issues," you're
18 talking about the increasing capability to store
19 photos on the Internet and to share photos on the
20 Internet and the emergence of companies like
21 Shutterfly and products like Google's Picasa Web
22 Albums?

23 A. To the -- let me be careful how I want
24 to answer this. The -- the impact of the various

1 other media technology and channels were certainly
2 noted and understood to be impactful in my -- in
3 my point of view about the business. But they --
4 but beyond that, did I go and look at some
5 economic data in those -- in those respects? No.
6 The only things that I did review were the -- were
7 the information that was available through a
8 variety of sources inside those documents.

9 Q. Did you do any independent investigation
10 in preparing your report or formulating your
11 opinions as to the marketshare that any of the
12 emerging Internet-based companies or retail
13 outlets took from Creative Memories in regard to
14 memory preservation products and scrapbooking?

15 A. No.

16 Q. In preparing your report and formulating
17 your opinions, did you take into account the
18 emergence of Facebook as a photography storage and
19 sharing product?

20 A. No.

21 Q. Did you make any effort to determine the
22 marketshare of memory preservation and photo
23 sharing of that market that Facebook took from
24 Creative Memories?

1 A. No.

2 Q. In formulating your opinions and
3 preparing your report, did you consider any other
4 companies that ran into some trouble in the
5 marketplace as a result of online photo and
6 digital storage such as Eastman Kodak?

7 A. Well, the "such as" I certainly didn't
8 recall, but the -- only to the extent there were
9 discussions by some of the private equity funds
10 who had -- had done some research or had positions
11 in companies like that, if I recall, of some of
12 the impact and some of the -- some of the -- just
13 what the economic conditions of those companies
14 were.

15 Q. And what were the economic conditions of
16 those companies?

17 A. Some of those were struggling.

18 Q. Do you recall which specific companies?

19 A. I don't offhand.

20 Q. Do you recall which -- what sources you
21 were looking at that you just referred to in terms
22 of investment bankers and others?

23 A. What I recall is that it showed up in a
24 bulleted document probably from Houlihan on the

1 response from -- from one or -- you know, or maybe
2 more than one of the private equity funds.

3 Q. Do you remember which private equity
4 funds?

5 A. I don't offhand.

6 Q. Have you ever published any articles on
7 corporate governance?

8 A. No.

9 Q. Ever teach a course on corporate
10 governance?

11 A. No.

12 Q. Did you review any scholarship or
13 treatises on corporate governance in preparing
14 your report or formulating your opinions?

15 A. Not specifically for this process, no.

16 Q. Have you ever advised a corporate
17 director about corporate governance issues?

18 A. Yes.

19 Q. And can you tell me your general
20 experience there in giving such advice?

21 A. Well, it's fairly ongoing. In fact, I
22 have a client in the hospitality business with
23 a -- with a company that I did a fairly large
24 restructuring for in 2011. And the CEO's on the

1 board and I'm an advisor to the board and -- you
2 know, infrequently but not -- not terribly, but --
3 but I do advise him on governance issues.

4 Their company's just been bought by --
5 at least the debt's been bought out by a -- by a
6 -- by a PE fund. And there's issues on -- in
7 terms of indemnification, and they're looking at
8 doing an Article 9. So yeah, sure.

9 Q. Well, describe for me the specific
10 governance issues that you've given advice on in
11 that one particular case you've just testified to.

12 A. The issues are really what is the
13 responsibility of the board in terms -- it's a
14 Delaware company and what the -- you know, what --
15 what the -- how broad those -- those requirements
16 are, and these are conversations I had with the
17 CEO.

18 Q. What requirements?

19 A. In terms of what their obligations are
20 in terms of total stakeholder -- with the
21 stakeholders.

22 Q. And what I'm trying to get at is what is
23 your advise to them about their obligations
24 vis-a-vis stakeholders?

1 A. In this company in particular, there are
2 -- there are vast divisions between the holders of
3 the equity and the debt in the company. The
4 company has gone -- underwent a very substantial
5 restructuring with a hedge fund as one of their
6 lenders.

7 The board is conflicted. They came in
8 -- the primary, at least, decorum for the board
9 came in from the -- from the lenders and the
10 inside board of directors, the CEO and chief
11 operating officer of the company.

12 And there's been a lot of conflicts as
13 to what to do and what happens in respect to, for
14 example, if they did an Article 9 sale and
15 whatever type of liability might exist for those
16 particular board members.

17 Q. Do you recall what advice you gave them
18 about dealing with conflicts?

19 A. I'm trying to think specifically. Not
20 specific. I mean, I -- you know, the advice has
21 been around what their obligations are with these
22 -- this particular person's obligation is for the
23 whole company and what the potential consequences
24 would be if there was, for example, successor

1 liability or -- or there was the -- the shell left
2 -- was left over and they were still a fiduciary
3 to that shell.

4 Q. You referenced a person. Is this a
5 director or --

6 A. He's a director and he's a -- he's a CEO
7 and a director of the board.

8 Q. And what advice did you give him?

9 A. Just really -- just rounding out what --
10 you know, what I thought he needed to know about
11 what those things could be.

12 Q. And what did you think he needed to
13 know?

14 A. The questions he asked me was what
15 happens if they do an Article 9 and we -- and we
16 still have the C Corporation, the Delaware
17 corporation, and we have an Article 9 in a Newco,
18 and what's -- what happens if there is -- if
19 there's any type of lawsuit that occurs to the --
20 to the shell in which he's still fiduciary, and
21 basically just outlining what I think would be
22 generally the case.

23 Q. Did you provide him advice on how to
24 avoid a conflict situation?

1 A. Not specifically, no.

2 Q. Okay. Did you provide only him advice,
3 or were you advising the entire board?

4 A. In various times, I've advised the
5 entire board but more on financial transaction
6 matters. This case -- this has been more on him
7 as a director than as a fiduciary.

8 Q. Did you provide any other governance
9 advice to that particular board?

10 A. Not -- not that I recall.

11 Q. Is there any other experience you have
12 in dispensing what you consider to be corporate
13 governance advice to a director or a manager or a
14 corporate board?

15 A. Not specifically. I've been on several
16 boards and advised several boards.

17 Q. I didn't ask you if you were on several
18 boards; I'm asking whether you recall other than
19 the instance you just described.

20 Do you recall, as an advisor, providing
21 a director, a board, or corporate manager advice
22 with regard to corporate governance issues?

23 A. I don't recall specifically.

24 Q. The one company and one situation you

1 did provide advice in conjunction with an Article
2 9 sale, can you tell me who that company is?

3 A. I can. It's BridgeStreet Worldwide,
4 Incorporated.

5 Q. Who is the particular director that you
6 were principally advising?

7 A. His name is Sean Worker, W-O-R-K-E-R.

8 Q. Have you reviewed any scholarship or
9 treatises addressing the duties of an interested
10 director in a transaction under Delaware and
11 Minnesota law in preparing your report or in
12 formulating your opinions in this case?

13 A. No.

14 Q. Do you have any experience in advising
15 an officer or director of an Ohio corporation
16 about their -- about corporate governance matters?

17 A. I have a lot of clients. I'm trying to
18 think. Specifically governance matters, nothing
19 that I specifically recall.

20 Q. I note in your report at page 4 that
21 Silverstone provides, among many other services,
22 business valuations; is that -- is that right?

23 A. That's correct.

24 Q. How many valuations have you personally

1 performed since 2008?

2 A. Oh, geez. We do five to ten a year.

3 I'm serious. It's about five to ten a year.

4 Q. Oh, no, I appreciate that. I only
5 laughed a little, which wouldn't be reflected on
6 the record, because that was going to be a follow-
7 up question, is how many -- how many times does
8 Silverstone perform business valuations per year,
9 and I think now the answer is five to ten.

10 Of those five to ten since 2008, how
11 many of those business valuations are you the lead
12 on, Mr. Greenberg?

13 A. Almost all of them.

14 Q. Well, when you say almost all of them,
15 can you give me an estimate?

16 A. I would actually say all of them. I
17 have somebody that works for me that will do the
18 detailed work of it, but I oversee it, and it's
19 based on the models that I've developed, and so...

20 Q. With regard to your business valuations,
21 have you ever valued a non-public S Corporation?

22 A. Oh, yeah.

23 Q. Can you give me any examples?

24 A. Yeah, I have -- I have a bunch. I'm

1 trying -- let me think. Yeah, I did valuation
2 work for the Ryan Style Company. I've done
3 valuation work for an S Corp broker-dealership in
4 Cincinnati. I don't want to say who it is. I'm
5 under confidentiality.

6 I've done -- I've done a lot -- a lot of
7 my -- a lot of my clients are S Corps, so a fair
8 number of them. And I can't remember all of them,
9 but quite a few.

10 Q. In general, for what purpose were you
11 preparing valuations for these companies?

12 A. Usually to -- you know, usually in
13 anticipation of a transaction, so a sale of the
14 company; in anticipation of a buy-sell agreement,
15 a buy-out of the company; sometimes it's an annual
16 requirement; and we do it for 409(a) -- IRC 409(a)
17 requirements for options, phantom stock plans,
18 stock appreciation right plans, stock grants,
19 things like that.

20 Q. In preparing your report and formulating
21 your opinions in this case, sir, did you bring to
22 bear any of that experience in attempting an
23 independent valuation based on historical data
24 available on the record of Antioch's value in the

1 2003 time frame?

2 A. That's a fairly complex question.

3 Q. Thank you.

4 A. I bring a fair amount of my expertise in
5 valuation to what I -- what I -- what my opinion
6 was on the one hand, but did I do an actual
7 valuation --

8 Q. Yes, sir.

9 A. -- if that's what you're asking --

10 Q. That's what I'm asking.

11 A. -- the answer is no.

12 Q. Did you bring to bear your prior
13 experience to attempt an independent valuation of
14 The Antioch Company in the 2007/2008 time frame in
15 conjunction with preparing your report or
16 formulating your opinions in this case?

17 A. You'll have to repeat the question. I'm
18 sorry.

19 MR. SCHEIER: Can you read it back,
20 please, Kelly, when you get a chance?

21 (The question was read back.)

22 A. The -- the broad answer is we didn't do
23 -- I didn't do a valuation of The Antioch Company
24 in preparation of this report.

1 Q. In one of your prior answers, you
2 mentioned that you've developed valuation models?

3 A. Mm-hmm.

4 Q. Is that your own model that you
5 developed?

6 A. The model is -- we use several models,
7 but the model is not idiosyncratically mine. It's
8 the -- we use Gordon Growth Models and Capital
9 Asset Pricing Models, which are fairly standard
10 valuation models that are used in the -- in the --
11 you know, from professional valuers.

12 In fact, Prairie Capital and BVI use
13 very similar methods. There's little differences
14 in how some of the calculations are approached,
15 but the same concepts are there. It's discounted
16 cash flow. You're capitalizing present values of
17 discounted cash flow and residual and terminal
18 values.

19 Q. You didn't use any of that modeling to
20 do independent valuations of Antioch at any time
21 in conjunction with your expert engagement
22 here; is that correct?

23 A. That's correct.

24 Q. Have you ever published any articles

1 with regard to business valuation methodologies?

2 A. Yeah, I've -- several things that I've
3 written there that refer to valuation
4 methodologies and flaws in valuation
5 methodologies, sure.

6 Q. And were those published in the last ten
7 years?

8 A. I think so. There's one on -- an
9 article I did, which you should have, called
10 "Allocating Value to the Market."

11 Q. Have you ever taught any classes in
12 regard to business valuation?

13 A. I actually have, yeah.

14 Q. Okay. And do you have any
15 certifications or belong to any business or
16 professional associations that deal with corporate
17 valuations?

18 A. No.

19 Q. Have you ever served as an expert
20 witness offering opinions about damages in a piece
21 of litigation?

22 A. No.

23 Q. Have you ever been qualified by a state
24 or federal court to provide damages testimony in

1 any case?

2 A. No.

3 Q. Have you ever written any articles about
4 damages in litigation?

5 A. No.

6 Q. And have you ever taught any courses in
7 regard to damages in litigation?

8 A. No, I haven't.

9 Q. Are you familiar with any damages
10 methodologies?

11 A. No, I'm not.

12 Q. Have you ever made any presentations to
13 a professional or business organization about
14 damages and proving damages in litigation?

15 A. No.

16 Q. Have you made any presentation or have
17 you published any articles about calculating the
18 damages that a company suffers based on breaches
19 of its officers' or directors' fiduciary duties?

20 A. No.

21 Q. Are you familiar with any methodologies
22 typically used by damages experts?

23 A. No.

24 Q. I take it, then, you didn't bring to

1 bear any specifically identifiable damages
2 methodology in preparing your report or
3 formulating your opinions in this case?

4 A. That would follow from my previous
5 answers, yes.

6 Q. Other than the one case identified in
7 your report -- In Re: Berean Christian Stores --
8 have you been retained in any other matter to act
9 or serve as an expert witness on any topic?

10 A. That's the only time I've been in court
11 as an expert witness, yes.

12 Q. Well, that wasn't quite what I asked.
13 I'm asking whether you've ever been engaged before
14 as an expert witness other than the Berean
15 Christian Stores bankruptcy back in 2009?

16 A. Yeah. The reason I parsed what you said
17 was because I have been engaged in the Ventilex
18 363 bankruptcy, but we settled it before it went
19 to court.

20 Q. You were engaged to be an expert witness
21 in that case?

22 A. Yes.

23 Q. Did you prepare a report?

24 A. No. I was going -- I was in the process

1 of preparing the report, and it was settled.

2 Q. Do you have a draft of the report you
3 prepared?

4 A. I may. I have to -- it didn't -- it
5 wasn't finished, but I might have some vestige of
6 it sitting there somewhere.

7 Q. What year was that?

8 A. I think it was two summers ago, so...

9 Q. Were you hired by a law firm?

10 A. Yes, from -- a law firm out of
11 Cleveland. Loeser and -- Loeser and something. I
12 forget the name of it.

13 Q. Do you remember the name of the lawyer?

14 A. If you give me a little time, I can
15 remember it. It's a pretty distinct name, an
16 Italian name. The first name is Rocco something
17 or other. He was the bankruptcy lawyer for Loeser
18 and whatever, and he was referred to me through
19 bankruptcy attorneys in Cincinnati.

20 MR. SCHEIER: Maybe I'll give you a
21 little bit of time now since we'll take a short
22 break.

23 THE WITNESS: Okay.

24 MR. SCHEIER: Thank you.

1 (A brief break was taken.)

2 Q. (By Mr. Scheier) Welcome back from
3 break, sir. I wanted to follow up on one line of
4 questioning prior to the break. It has to do with
5 commercial real estate leases.

6 I probably didn't give you an
7 opportunity to talk about something you did want
8 to talk about, and that is your experience --

9 A. Mm-hmm.

10 Q. -- general experience, I take it. Is it
11 negotiating commercial real estate leases, or what
12 did you want to talk about?

13 A. Well, I've negotiated many commercial
14 real estate leases. I've unwound commercial real
15 estate leases. It's an inevitable part of my
16 practice. My clients often own property or lease
17 property. We work on transactions primarily,
18 so -- so we -- we see a lot of leases.

19 Q. And you refer to the -- I don't know if
20 it's the royal "we" or to what you're referring.
21 Tell me -- I'm interested in your experience.

22 A. My experience principally is what I'm
23 referring to.

24 Q. Have you ever negotiated a commercial

1 real estate lease?

2 A. Many.

3 Q. When you say "many," what is the
4 magnitude of many?

5 A. Fifty to a hundred.

6 Q. And over what time period?

7 A. Last 30 years.

8 Q. Can you tell me the general value --
9 economic value of those leases in terms of either
10 the rent stream or however else you would
11 determine that?

12 A. I've worked on negotiating a lease in
13 Chicago for a client somewhere in the neighborhood
14 of \$5 million a year in rent.

15 Q. Any other examples that you want to give
16 me?

17 A. We deal with a lot of commercial and
18 industrial properties, and they're all over the
19 place. I just renegotiated a workout lease where
20 we're -- we have a hundred plus thousand square
21 feet of space and -- with a firm that's owned --
22 the landlord is in Chicago. You know, I'm trying
23 to think of what that is. It's probably in the
24 neighborhood of, you know, \$750,000 a year in

1 rent.

2 Q. Have you in the past, other than the one
3 lease in Chicago you reference with about a \$5
4 million revenue stream, dealt with commercial real
5 estate leases the size of the Levimo lease?

6 A. I'm trying to think of what the -- what
7 the size is. I mean, square footage-wise? Is
8 that what you're referring to?

9 Q. No. I apologize. It was an inartful
10 question. In terms of the rent stream.

11 A. I'm trying to think if I've done -- I'm
12 not sure that I've -- specifically at that level,
13 but I've done many in middle market companies, so
14 it's hard for me to say.

15 Q. Have you ever been involved in a
16 sale-leaseback transaction of the type that Levimo
17 undertook with The Antioch Company?

18 A. Yes.

19 Q. How many?

20 A. Ten, maybe.

21 Q. Did any deal with the purchase price of
22 the property involved in that transaction that was
23 as high as the price in the Levimo transaction of
24 \$26 million?

1 A. That probably -- not -- probably not,
2 no, I'd say. Just smaller properties.

3 Q. I'd like you, please, to focus your
4 attention again on Exhibit 797, and that would be
5 the report that the Taft firm gave us as your
6 report.

7 A. Mm-hmm.

8 Q. And I just -- I might have asked this.
9 I'm sorry if I did. Will you just, please,
10 identify this as the report -- written report you
11 prepared in this case?

12 A. Yes, it is.

13 Q. Who drafted this report?

14 A. I did.

15 Q. Did any of the other members of
16 Silverstone, LLC, assist in drafting this report?

17 A. They did not.

18 Q. Did your one employee, Mr. Mehta, assist
19 in drafting this report?

20 A. He did not.

21 Q. Did anyone edit the report other than
22 you?

23 A. The report was given in a -- in a
24 penultimate final draft to Taft to look -- make

1 sure that the factual statements were correct.

2 Q. And the Taft law firm confirmed for you
3 that the factual statements were correct?

4 A. There were a few small nits on the -- on
5 -- I can't remember specifically what it was, but
6 it was minor.

7 Q. Did any attorney from the Taft law firm
8 draft any part of the report?

9 A. No.

10 (Deposition Exhibit No. 800 was marked.)

11 Q. Well, sir, you're probably going to be
12 proud to know that you are part of a milestone
13 event in the case, and that is the marking of
14 Deposition Exhibit 800.

15 A. I feel privileged.

16 Q. I'm sure you do.

17 Sir, I've handed you what I've marked as
18 Exhibit 800, and it is a copy of the Federal Rule
19 of Civil Procedure 26. Do you see that?

20 A. I do.

21 Q. Have you seen this rule before?

22 A. No.

23 Q. Have you ever heard of it before?

24 A. No, not specifically this, no.

1 Q. Anyone at Taft mention Rule 26 to you?

2 A. Not that I recall.

3 Q. I have some questions to better
4 understand your report that key off of a section
5 on the second page of Exhibit 800.

6 A. Mm-hmm.

7 Q. And if you would take a look there down
8 about a third of the way, there is a, parens, 2,
9 close parens, Disclosure of Expert Testimony. Do
10 you see that, sir?

11 A. I do.

12 Q. And if you'd go down to subsection,
13 parens, capital B, close parens, Witnesses who
14 must provide a written report -- and let me know
15 when you get there.

16 A. I'm there.

17 Q. All right. I'd ask you to read that
18 paragraph, but I'm going to focus my questions on
19 the very last sentence that says "The report must
20 contain..." But I'd like, just for some
21 background, if you'd just take a moment and read
22 the paragraph through that last sentence I just
23 quoted.

24 A. (Examining document.) Just through the

1 end of B? Is that what you're asking for?

2 Q. Yes, just through the words "The report
3 must contain," colon. And when you're done with
4 that, you can look up, and I'll know that you're
5 done.

6 A. (Witness looked up.)

7 Q. Okay. Very good. You, of course, have
8 been specially employed to provide expert
9 testimony in this case on behalf of the plaintiff,
10 correct?

11 A. That's correct.

12 Q. Then I'd like you to look at the
13 subsections that follow what the report must
14 contain. You'll see a paragraph little "I" --
15 strike that -- parens, little "I," close parens?

16 A. Mm-hmm.

17 Q. It says there "The report must contain a
18 complete statement of all opinions the witness
19 will express and the basis and reasons for them."
20 Did I read that correctly?

21 A. You did.

22 Q. Does your report contain a complete
23 statement of all opinions that you will express
24 and the basis and reasons for them?

1 A. I believe it does.

2 Q. Well, I'm asking you if it does.

3 A. Yes.

4 Q. Okay. Little Roman ii says "The report
5 must contain the facts or data considered by the
6 witness in forming them."

7 Does your report identify all facts and
8 data that you considered in forming your opinions?

9 A. To the best of my knowledge, it does.

10 Q. Well, you wrote the report, so your
11 knowledge is really kind of the beginning and the
12 end, isn't it?

13 A. I would think so.

14 Q. Okay. Little iii notes that the report
15 must contain any exhibits that will be used to
16 summarize or support the opinions you're going to
17 be giving in this case.

18 I didn't notice any exhibits attached to
19 your report other than your CV, so I'm assuming
20 there aren't any that we're going to see?

21 A. No. All the exhibits were -- to the
22 extent I had any exhibit, they were integrated
23 into the text, so they weren't separate from.

24 Q. I'm sorry. I read this so frequently as

1 a lawyer and you don't, and I just think you've
2 misread it slightly or misunderstood. It's
3 referring to any exhibits that you've prepared
4 that will be used to summarize or support your
5 opinions other than your CV that was attached as
6 an exhibit to your report.

7 Were you planning or did you prepare any
8 exhibits that will be used to summarize or support
9 the opinions that you'll be giving in this case?

10 A. I did not.

11 Q. Little iv, or 4, says that the report
12 must contain your qualifications including a list
13 of all publications authored in the previous ten
14 years.

15 Does your report comply with that aspect
16 of the rule?

17 A. Yes.

18 Q. And lastly, the reports require -- the
19 rule requires that your report contain a list of
20 all other cases in which, during the previous four
21 years, you testified as an expert by trial or by
22 deposition.

23 Does your report comply with that aspect
24 of the rule?

1 A. Yes, it does.

2 Q. In preparing for this deposition -- I'm
3 sorry if I asked you this already -- did you
4 review any documents that you hadn't reviewed
5 while preparing the report and formulating the
6 opinions that are in it?

7 A. I'm not sure what you're asking.

8 Q. Okay. It happens often in depositions.

9 Did you look at any documents in
10 preparing for this deposition with the Taft
11 lawyers that you hadn't considered in preparing
12 your report and formulating your opinions?

13 A. I'd say no. By the way, you haven't
14 asked, but the name of the attorney is Rocco
15 Debitetto at Hahn and Loeser in Cleveland.

16 Q. Well, thank you. I appreciate that.

17 A. Pretty good, huh?

18 Q. Yeah, you were probably chomping at the
19 bit waiting for me to get to that question. It
20 was coming, I promise.

21 A. I figured it was.

22 Q. The last requirement of the report under
23 the rule, sir, is it must contain a statement of
24 the compensation to be paid for the study and

1 testimony in the case.

2 And I did see reference to that in your
3 report, and I presume you've complied with that
4 aspect of the rule?

5 A. Yes.

6 Q. Are you going to be asking the Taft
7 firm, or the Litigation Trust as probably better
8 said, to pay you any more than \$350 an hour for
9 actually appearing and testifying in court?

10 A. No. It's -- the agreement's at 350.

11 Q. 350 for all services --

12 A. Yes.

13 Q. -- including your appearance here at
14 this deposition?

15 A. Yes.

16 Q. Okay. Thank you. You can put that
17 deposition exhibit aside.

18 And now having confirmed that all the
19 opinions you'll be giving in this case are
20 contained in this report that you prepared, I'd
21 ask you to state for me now each and every opinion
22 that you anticipate giving at the trial of this
23 matter.

24 MS. ANDREW: Objection. Do you want him

1 to read the report to you?

2 MR. SCHEIER: The report's the report.

3 I'm wondering what his opinions are...

4 Q. ...what opinions you'll be testifying to
5 at trial.

6 MS. ANDREW: Objection.

7 A. I'm not -- the report is my opinion or
8 opinions. So do you want me to orally commit
9 these to you, is what you're asking for
10 specifically right now?

11 Q. Well, I'm wondering if you're asked at
12 trial by a Taft lawyer or one of the defendant's
13 lawyers what opinions will you be offering in this
14 case, if you're able to articulate a specific
15 opinion or multiple opinions that you will be
16 giving.

17 I understand you wrote a 25-page report,
18 but in my experience, there's normally a report
19 that provides principally support for opinions
20 that will be given.

21 A. Mm-hmm.

22 Q. So with that understanding --

23 A. Yes.

24 Q. -- or if that distinction is meaningful

1 to you, it may not be, I'm asking you to
2 articulate on this record each and every opinion
3 that you will be giving at trial in support of the
4 plaintiff's case.

5 MS. ANDREW: Same objection.

6 MR. SCHEIER: What's the basis for the
7 objection?

8 MS. ANDREW: That it's unduly
9 burdensome. You've asked him basically to repeat
10 his report. His report is there. You know, are
11 you saying are there opinions other than what's in
12 his report?

13 MR. SCHEIER: No. He said all his
14 opinions are in the report. I'm wondering what
15 those opinions are. The rule requires a report
16 that contains, among other things such as facts
17 and data supporting an opinion, the opinions.

18 Q. (By Mr. Scheier) I read the report, and
19 I wasn't sure if your opinions were contained in
20 the conclusion section or if you omitted a section
21 that was called "opinions."

22 But what I'm wondering is, at trial,
23 what will you testify to as to your opinions in
24 this case.

1 A. So if -- may I -- if I enumerate each --
2 each category that I would address as an opinion,
3 whatever I'm going to opine on, is that what
4 you're looking for me to give you right now?

5 Q. I'm asking what you're going to opine on
6 at trial. What will your opinions be in this
7 case?

8 A. Sure. My opinions are the following:
9 The 2003 tender offer transaction was poorly
10 thought out, poorly executed, poorly advised,
11 inadequately advised, and -- for a number of
12 reasons: that the information -- well, you've
13 asked me, so --

14 Q. No. I've asked you for your opinions,
15 not the bases yet. So one opinion is that the
16 2003 tender offer was poorly thought out?

17 A. Poorly thought out. I would even say
18 reckless.

19 Q. What is your understanding of the phrase
20 "reckless"?

21 A. That there was certainly plenty of
22 opportunity to review what the impact of the
23 transaction would have been, that it was ignored
24 and went ahead anyway to essentially enrich the

1 non-ESOP shareholders.

2 Q. Any other opinions?

3 A. Sure. That the dual-track, so called,
4 was highly irregular. I've never seen anything
5 like it before. That there was active
6 interference between the wishes of the Morgan
7 group represented by Candlewood with Houlihan.

8 Q. Is that an independent opinion? The
9 opinion is the dual-track was highly irregular.
10 Is that the opinion?

11 A. The dual-track was detrimental to the
12 company is the opinion and to the process and to
13 the outcome.

14 Q. Okay. Any other opinions that you'll be
15 offering at trial?

16 A. The two major areas that I covered. I
17 also discuss the Levimo lease.

18 Q. Sir, I don't want to know what you
19 discuss. I'd like to know what opinion you'll be
20 giving at trial.

21 A. I'm getting there. My opinion would be
22 that the Levimo lease, given the context known by
23 everybody involved, including the board of
24 directors, acted and had the potential to act as a

1 poison pill in the benefit of the -- of Mr. Morgan
2 and his -- primarily Mr. Morgan.

3 I would also opine on -- I'm trying to
4 think on what other things I've covered. Just
5 bear with... Um...

6 MS. ANDREW: Feel free to look at your
7 report.

8 A. Yeah, let me just -- if you don't mind,
9 thanks. (Examining document.) Related to the
10 2003 transaction, I certainly would opine that the
11 post-transaction capital structure and balance
12 sheet prevented the company from really addressing
13 the problems that it had, and that in addition to
14 competitive technologies and competitors in
15 general, largely contributed to the business's
16 inability to address its problems.

17 I would further opine in related to the
18 2003 transaction that the board should have known
19 and should have contemplated at a great level of
20 detail with numerous scenarios that having over a
21 thousand individual shareholders have a put right
22 over a three-year period after the founder
23 basically de-equitized the company and enriched
24 themselves by \$120 million was a dramatic mistake

1 and one that led to the ultimate demise of the
2 company.

3 Q. The put right -- the three-year put
4 right...

5 A. Mm-hmm.

6 Q. ...led to the demise of the company.
7 Okay.

8 A. It drained the money of all capital
9 between that and the debt structure that they took
10 on. I would further opine that the various offers
11 that Mr. Morgan was attempting to put in place,
12 including Mr. Moran and in conjunction with the
13 Candlewood Investment bankers, were demonstrably
14 over the market value of the company, and that in
15 consideration of the fact that Houlihan had
16 contacted over 170 individual potential buyers,
17 had close to 70 NDAs and multiple other offers
18 that -- to consider that a group in this one
19 company -- to think that that -- the market wasn't
20 talking to them and that they would delay other
21 actions that would benefit the company was an
22 enormous lack of judgment and -- and that the
23 board was highly compromised in allowing that to
24 happen by its relationship with Mr. Morgan.

1 Q. Any other opinions?

2 A. Give me a minute. (Examining document.)

3 Yeah, I do have other opinions. One is that the
4 board, through Houlihan Lokey and to some extent
5 through McDermott, Will & Emery -- or certainly in
6 the context of the state of the solvency of the
7 company and the various valuations, was actually
8 giving them fairly good advice, but they were not
9 heeding that advice. And that also led to --

10 Q. What time frame?

11 A. Certainly '07 and '08. Primarily I
12 think the fall of '07 -- the fall through the end
13 of the year to -- to -- to the 2008 bankruptcy, so
14 through the summer.

15 Q. When you say "the board," are you
16 referring to the Special Transaction Committee
17 prior to June 2008?

18 A. I'm referring to the Special Transaction
19 Committee but also the board in general.

20 Q. Okay. Any other opinions?

21 A. Yeah. I mean, I think the correlate --
22 correlating to that, I believe that the 363 offers
23 were -- particularly the Whitney offer -- the --
24 the -- in the late spring -- early/late spring of

1 2000 -- 2008, sorry -- were -- were the best
2 offers, and they should have accepted those
3 offers.

4 Q. That's an opinion you'll be giving at
5 trial, that the board should have accepted the
6 Whitney offer?

7 A. Well, the Special Transaction Committee
8 accept the Whitney offer. It got blown up by
9 Lenoir and by Evolve and by Mr. Morgan.

10 Q. So what's your opinion?

11 A. My opinion is that it was the best offer
12 out there, is my simple -- simple opinion; that it
13 wasn't acted on. That's my opinion.

14 Q. Your opinion is that the J.H. Whitney
15 offer was the best out there, and it was not acted
16 upon?

17 A. Best offer out there and best offer for
18 the company and for its continuation post-tran --
19 post-363.

20 Q. Okay. Any other opinions?

21 A. Well, I think I -- I certainly opine
22 that I thought the Candlewood process and offer be
23 -- the offers that Candlewood came up with were
24 just -- just rife with execution risks and

1 overvalued the company well beyond where the
2 market is. But I think that's implied in some of
3 what I've said.

4 Q. Yeah, I think that was your sixth
5 opinion, yes?

6 A. If you --

7 Q. That's not an independent opinion,
8 correct? You've already given me that, or is that
9 another opinion?

10 A. That's -- it's -- no, it's -- it's
11 integral to one of those.

12 Q. Okay.

13 A. You're doing the counting; I'm not,
14 so...

15 Q. Well, I would think you would have come
16 in here knowing the opinions you're giving and the
17 number of them, so --

18 A. Well, I do.

19 Q. -- but I'll count them up for you.

20 A. I appreciate that.

21 Q. Eight opinions.

22 A. I accept that.

23 Q. Sir, other than those eight opinions,
24 will you be giving any other opinion at the trial

1 of this matter?

2 A. Apart from elaborations of those, I
3 don't think so.

4 Q. Well, I need to know definitively
5 whether you'll be giving any other opinions at
6 trial other than the eight you've just identified.

7 A. Those are the principal opinions. I
8 don't -- I don't imagine having others. So the
9 answer would be that would all -- that is all I'll
10 opine on, yes.

11 Q. The eight opinions you just gave me is
12 the total of opinions that you'll be giving in the
13 trial of this matter?

14 A. I just confirmed that, yes.

15 Q. Okay. A couple of questions to start
16 with.

17 A. Please.

18 Q. Are you aware that the district court in
19 this case dismissed all of the plaintiff's claims
20 relating to the 2003 transaction?

21 A. I'm aware that -- I guess the way I've
22 understood it is that that was the assumption,
23 that -- that it didn't want to be brought back up
24 again, so... so... So actually dismissed, I

1 didn't know that. That you believed or all the
2 defendants' counsel believed we'd already gotten
3 through that, that I understood.

4 Q. Okay. So you understood those claims no
5 longer exist in this case?

6 A. No, I didn't under -- I didn't say that.

7 Q. Okay.

8 A. I didn't -- what I understood was
9 that -- it was that it was the belief of
10 defendants' counsel that that hadn't already --
11 that that had already passed and there -- was not
12 going to be readdressed. That it was dismissed
13 definitively and ultimately and so on, that I was
14 not aware of.

15 Q. Okay. I'll represent to you that the
16 liability based on the 2003 transaction has been
17 completely dismissed out of this case. It doesn't
18 matter if it's the defendants telling you that or
19 the plaintiffs. So I'll make that representation
20 to you as we sit here today.

21 MS. ANDREW: Well, objection.

22 Q. I want to first talk about your opinion
23 at the -- I think the way you articulated it was
24 the 2003 tender offer was poorly thought out and

1 reckless. Do you recall that?

2 A. I do.

3 Q. In forming that opinion, it's true you
4 did not look at the tender offer document,
5 correct?

6 A. I did not.

7 Q. And in coming to that opinion, you
8 didn't look at any of the board of directors
9 meeting minutes between January 2003 and December
10 of 2003; is that correct?

11 A. If they weren't in my document folder,
12 then the answer would be yes. I recall reading an
13 awful lot about the transaction, but if it was
14 specifically that, I don't -- I don't -- I can't
15 say yes.

16 Q. Well, sir, earlier in the deposition, we
17 identified two documents that you received that
18 were dated prior to 2006. One was the BVI
19 valuation. The other was a document of unknown
20 origin that was marked as Exhibit 2 in a Fifth
21 Third Bank deposition.

22 A. Mm-hmm.

23 Q. You don't recall looking at any of the
24 minutes of board of directors meetings in 2003

1 where the terms of the transaction and the
2 progress of the -- negotiating the transaction was
3 discussed?

4 A. I'll take your -- I'll take your
5 representation that it's not there and I didn't --
6 but I obviously have a fair knowledge of what the
7 transaction was through other documents.

8 Q. Well, that isn't my question.

9 A. I know.

10 Q. Whether you have a fair knowledge of it
11 or not, someone else will determine. I'm asking
12 whether you looked at any of the board of
13 directors meeting minutes in the calendar year
14 2003 where the transaction was discussed?

15 A. I've already answered the question.

16 Q. And what's the answer to the question?

17 A. I said if it's not there, then I didn't
18 see it, and I didn't -- I didn't review it.

19 Q. Did you review any of the transaction
20 work papers put together by Deloitte & Touche on
21 behalf of the board?

22 A. I did not.

23 Q. Did you look at any of the work product
24 prepared by the Duff & Phelps group underlying the

1 fairness opinion that it gave to GreatBanc?

2 A. I did not. I knew of it, and I -- it
3 was stated, but the answer is I didn't look at the
4 -- it wasn't -- didn't have the details of it.

5 Q. You didn't have those documents, in
6 fact --

7 A. Right.

8 Q. -- did you, sir?

9 A. Correct.

10 Q. Did you look at the Duff & Phelps
11 fairness opinion in formulating your opinion that
12 the 2003 tender offer was poorly thought out and
13 reckless?

14 A. No.

15 Q. You didn't have that, did you?

16 A. I did not.

17 Q. Did you look at any -- did you take into
18 account the prominence of Duff & Phelps in the
19 marketplace of ESOP valuation?

20 A. I'm well aware of Duff & Phelps. In
21 more general terms, we compete with them, so I
22 certainly know who they are.

23 Q. In coming of the opinion with regard to
24 the 2003 transaction that it was poorly thought

1 out and reckless, did you review any testimony by
2 a Duff & Phelps representative or employee?

3 A. If it was not in the document, I
4 don't -- certainly don't recall. If it was in
5 there, I've read through it, but I wouldn't -- I
6 don't --

7 Q. I'm representing to you it was not in
8 there.

9 A. Then I haven't.

10 Q. Okay. And by the way, you've done this
11 work within the last 60 days, correct? It's not
12 like you need to draw back a very long time to
13 remember what you reviewed and what you didn't
14 review, right?

15 A. Again, true.

16 Q. Do you recall reviewing any deposition
17 testimony from GreatBanc Trust Company?

18 A. No.

19 Q. Do you know what role GreatBanc Trust
20 Company played in the 2003 transaction?

21 A. I do.

22 Q. What role was that?

23 A. They were -- they were the trustee of
24 the -- of the ESOP.

1 Q. Did your --

2 A. Um...

3 Q. Go ahead.

4 A. You got another question?

5 Q. No. I cut you off and I apologize.

6 A. Oh, okay. They were the trustee. They
7 negotiated a quick price guarantee as a way of
8 allowing the non-ESOP shareholders to complete the
9 tender offer, essentially asked -- got them to
10 stand down in the transaction.

11 Q. Who got who to stand down?

12 A. Well, the trust -- well, apparently the
13 non-ESOP shareholders got an agreement with the
14 trust that they would not participate in the
15 tender offer.

16 Q. Did you review any of GreatBanc's or
17 Duff & Phelps' work product that led them to
18 decide not to tender the ESOP shares in the
19 transaction?

20 A. No, I didn't.

21 Q. Okay. Were you aware that if the ESOP
22 chose -- if GreatBanc chose to tender the ESOP
23 shares, the company retained the right to waive
24 that condition and close the transaction in any

1 event?

2 A. Please repeat that.

3 Q. Were you aware that the condition that
4 GreatBanc choose not to tender the ESOP shares was
5 a waivable condition of the transaction?

6 A. I'm not sure that I understand exactly
7 what you're -- what you're specifying.

8 Q. I thought you testified you understood
9 that a condition of the transaction was that
10 GreatBanc decide not to tender the ESOP shares to
11 the company?

12 A. What I said is that in my -- the report,
13 what I specifically said was that they stood down
14 and that it would seem hard to imagine that they
15 could have not -- they could have participated in
16 the tender offer because of the -- just the call
17 on the -- on the capital to try to satisfy
18 everybody at that -- at the tender offer price.

19 Q. Did you review any documentation or
20 testimony from anyone at GreatBanc or at Duff &
21 Phelps that was used in their fiduciary process in
22 making the decision not to tender shares in the
23 transaction?

24 A. I did not.

1 Q. Did you see any evidence that GreatBanc
2 chose not to tender the shares because of
3 insufficient funding to purchase the ESOP shares?

4 A. No. That conclusion was drawn by just
5 looking at what happened and the number of
6 shareholders and what would occur.

7 Q. But you have no evidence that GreatBanc
8 took that into account?

9 A. No, but that they should have.

10 Q. Okay. Did you take a look at any of the
11 modeling that Deloitte & Touche prepared and
12 presented to the board showing the financial
13 feasibility of the transaction?

14 A. Only to the extent it was reflected in
15 various documents that were subsequent to that in
16 some type of restatement of what occurred.

17 Q. No. I'm asking you whether or not you
18 reviewed any of Deloitte & Touche's underlying
19 work product supporting their advice to the
20 Antioch Board of Directors that the transaction,
21 as ultimately closed, was financially feasible?

22 A. I did not.

23 Q. Did you review any of the deposition
24 testimony of Helen Morrison?

1 A. I don't believe so.

2 Q. Do you know who Helen Morrison is?

3 A. I don't.

4 Q. Never heard of her?

5 A. I can't say I've never heard of her. I
6 just don't recall her name at the moment.

7 Q. Okay. I'll represent to you she was
8 Deloitte & Touche's lead in negotiating the
9 transaction on behalf of the company.

10 A. Okay.

11 Q. Never read her deposition testimony?

12 A. I did not.

13 Q. You're also aware that Houlihan Lokey
14 was hired by the board to offer a fairness opinion
15 that the transaction was financially fair to the
16 selling non-ESOP shareholders?

17 A. Yes, sir.

18 MS. ANDREW: Objection. I believe that
19 misstates Houlihan's opinion. But you may answer
20 the question.

21 A. My understanding -- (A), I was aware
22 that Houlihan had done that, but my understanding
23 of Houlihan was a fairness opinion on the
24 financial value of the -- of the tender offer at

1 the share price level. It was not a review of the
2 total transaction or the impact it may have on the
3 company.

4 Q. Did you review Houlihan Lokey's
5 fairness --

6 A. I didn't.

7 Q. -- opinion?

8 Did you review any of the underlying
9 work product supporting Houlihan Lokey's fairness
10 opinion?

11 A. I didn't.

12 Q. Did you review any testimony by either
13 GreatBanc or Deloitte & Touche relating to their
14 negotiation of the terms of the transaction?

15 A. I have not.

16 Q. Where did you gain an understanding of
17 the terms of the put price protection agreement?

18 A. Through the various documents that were
19 available to me including the bankruptcy documents
20 and a number of other places.

21 Q. Can you identify --

22 A. Whatever was in there.

23 Q. Can you identify any specific documents?

24 A. Not off the top of my head. I mean,

1 there were -- certainly the complaint that was
2 filed. There are a number of documents where it's
3 identified. It's in the Houlihan statements
4 and -- and summarizations. It's in one of the --
5 some Candlewood stuff. It's -- I mean, it's --
6 that's where it came from.

7 Q. Did you consider the repurchase
8 obligation study that Mr. Hoskins prepared in
9 conjunction with the 2003 transaction so the board
10 could consider its impact on its repurchase
11 liability of the ESOP shares?

12 A. I'm aware of it, but I -- but I did not
13 -- I did not have the document.

14 Q. Did you review any of Mr. Hoskins'
15 testimony about the repurchase obligation study
16 that he prepared, in particular, December of 2003?

17 A. I don't believe I have.

18 Q. Did you review any of the sensitivity
19 analyses that were presented to the board in
20 December of 2003 prior to it voting to approve the
21 2003 transaction?

22 A. No, just references that it was -- it
23 was -- there was a sensitivity analysis. That's
24 it.

1 Q. That wasn't my question. Did you review
2 the sensitivity analysis or no, sir?

3 A. I just did answer your question.

4 Q. You did not. Did you review it or not?

5 A. I did not review it. I just --

6 Q. Okay. Thank you. That answers the
7 question.

8 Did you review any of the testimony with
9 regard to the reasons why the company explored the
10 2003 transaction?

11 A. Yes.

12 Q. And what did you understand the
13 paramount reason to be from what you saw?

14 A. Well, what I believed is the paramount
15 reason is --

16 Q. I'm not asking what you believed. I'm
17 asking you based on the evidence you read --

18 A. Based on the documents, if I may, there
19 was an attempt to -- they saw it as an attempt to
20 realign the allocation system or -- for the ESOP
21 membership itself. And then in addition to that,
22 it was a chance to diversify the Morgans' personal
23 wealth while doing -- basically doing an equity --
24 debt recap of their equity.

1 Q. And with regard to diversifying the
2 Morgans' wealth, as you put it, which Morgans are
3 you talking about?

4 A. I thing principally Lee Morgan, but that
5 may include Asha as well.

6 Q. And specifically what evidence of that
7 concern and purpose did you see?

8 A. I'm just recalling testimony and -- that
9 I -- that I recall. That's what I recall.

10 Q. Can you identify here the testimony
11 you're recalling?

12 A. Not --

13 Q. Whose testimony?

14 A. Not specifically.

15 Q. So you can't, as we sit here today,
16 identify to me a shred of evidence that you've
17 seen supporting your understanding that Mr. Morgan
18 sought to diversify his financial portfolio
19 through this transaction?

20 A. It was my understanding in reading it,
21 and I'm not exactly sure where, or various
22 conversations with counsel that that was the --
23 one of the impetuses for making the decision to do
24 this.

1 Q. Can you point to any document or
2 testimony, sir, is what I'm asking you?

3 A. Not specifically here right now. No, I
4 can't.

5 Q. Okay. Very good. With regard to your
6 understanding of the terms of the put price
7 protection agreement, can you review those for me?

8 A. Yeah. The -- there was a -- the
9 redemptions were -- had a floor of \$850 per
10 share. The redemption -- the put -- the put price
11 guarantee was available to the members of ESOP
12 upon leaving the company for a period of three
13 years, and -- from the time the transaction
14 closed. And -- and that was primarily my
15 understanding of it.

16 Q. And nothing more than that?

17 A. Well, you asked me what was the -- what
18 was the put price guarantee?

19 Q. Mm-hmm.

20 A. The put price guarantee is a guarantee
21 that they would get no less than \$8 -- \$850 per
22 share for a period of three years if they redeem
23 their -- redeem their equity interest in the ESOP.

24 Q. And Taft didn't correct that aspect of

1 your report or tell you that it was factually
2 incorrect?

3 A. No. No one's told me it's factually
4 incorrect.

5 Q. As far as you know, as you sit here
6 today, that's factually correct?

7 A. As far as I know and from everything
8 I've read, it's factually correct.

9 MR. SCHEIER: Okay. Can we go off the
10 record for a second?

11 (A brief break was taken.)

12 Q. (By Mr. Scheier) Sir, I've put in front
13 of you Exhibit 31. And if you would, turn to page
14 -- it's internal page 27 of the tender offer
15 document. The Bates number in the right is
16 KMK-012121.

17 A. Mm-hmm.

18 Q. You there?

19 A. I'm there.

20 Q. You see towards the bottom of the page
21 there's a section that reads "ESOP Share Put
22 Price"?

23 A. Yes, I do.

24 Q. Why don't you go ahead and read that,

1 and when you're done reading it, look up. It
2 carries onto page 28, the very next page.

3 A. (Examining document.) Okay.

4 Q. Do you now recognize that your
5 understanding of the put price protection
6 agreement was incorrect? There was no three-year
7 floor price?

8 A. Based on this, yes, there's a
9 difference.

10 Q. Can you think of any document or
11 testimony, sir, that you looked at that indicated
12 the put price protection agreement had a
13 three-year \$850 floor and identify it for me
14 specifically as we sit here?

15 A. I can't do it specifically as we sit
16 here, but it certainly was not made out of -- I
17 didn't make it up, so it's in there somewhere.

18 Q. But you now see that you were wrong?

19 A. I see that this document does not agree
20 with what my understanding was.

21 Q. Any reason to dispute the accuracy of
22 this document?

23 A. I have no reason to dispute it.

24 Q. Did you review, in coming to the opinion

1 that the 2003 tender offer was poorly thought out
2 and reckless, any of the underlying financial
3 analysis of the transaction in the tender offer
4 document?

5 A. I didn't in the tender offer document.

6 Q. Okay. What is the basis for your
7 opinion that the tender offer was poorly thought
8 out and reckless in regard to the board of
9 directors' decision with all the information that
10 they had and all the advice they were given by
11 Deloitte & Touche, Houlihan Lokey, and GreatBanc
12 as of December 16, 2003, to enter into that
13 transaction?

14 A. Well, the beginning basis is what
15 happened, and that in 2004, there was over a
16 hundred million dollars of redemptions that in the
17 previous three years -- you're going to let me
18 finish, right?

19 Q. Mm-hmm.

20 A. -- previous three years, there was
21 approximately 35 to 36 million dollars.

22 Q. Now, did you see any evidence of how the
23 company planned to take care or whether they
24 projected that they would have that amount of

1 rejections, the amount of cash they would need to
2 have to deal with that liability? See any
3 evidence at all of that?

4 A. I didn't see any evidence of anyone
5 expecting there'd be 190 million dollars' worth of
6 redemptions and that 800 out of over a thousand
7 dollars would leave the company and redeem within
8 the three-year period, no.

9 Q. Did you look at all in coming to your
10 opinion at Mr. Hoskins' December repurchase
11 obligation study that predicted almost to the
12 dollar the amount of cash the company would
13 actually need based on the level of redemptions
14 that actually occurred?

15 A. The answer is I didn't see the report.

16 Q. Okay. Would it have been helpful to
17 you, do you think, to see that, in fact, the board
18 properly predicted, based on Mr. Hoskins'
19 repurchase obligation study, the amount of cash it
20 would need to come up with to fund \$110 million in
21 redemptions in 2004?

22 A. Restate the question.

23 Q. Yes. Would it alter your opinion in any
24 way if it turned out that the company planned for

1 and had sufficient cash at the time they voted to
2 go forward with the transaction the level of
3 redemptions they actually experienced in 2004?

4 MS. ANDREW: Objection.

5 A. Let me answer very carefully. The
6 answer is that in view of actually what did occur,
7 i.e., over a hundred million dollars in
8 redemptions in the year following the transaction
9 and subsequently another \$85 million more or less
10 over the next two years -- it was 190 total, so --
11 over three years -- and the -- and the cycling out
12 of 800 of 1,115 employees, that if anybody looked
13 at that and thought that that was a good plan,
14 then I would be highly suspect of their knowledge,
15 role, and judgment in this matter.

16 Q. Well, you don't have any experience in
17 undertaking repurchase obligation studies or
18 predicting what will trigger any particular
19 employee to make the decision to terminate
20 employment and cash out their retirement account
21 and then look for new work, do you?

22 A. Specifically, no.

23 Q. Okay. In terms of corporate board
24 planning, do you -- and in terms of coming to your

1 opinion, do you know how much cash -- although you
2 say \$180 million of redemptions --

3 A. 190.

4 Q. -- 190, do you analyze at all the cash
5 demand that that would make on the company? I
6 want to focus first on the \$110 million in
7 redemptions at the end of 2004. Do you know --
8 did you take into account any cash management
9 protections the company and board put in place to
10 be sure that that did not stress -- put any stress
11 on the company's finances and ability to do
12 business?

13 A. Are you -- you're asking me did I look
14 at anybody's forecasts to say that it didn't do
15 that?

16 Q. No. Did you look at anything that --
17 any planning the company undertook prior to
18 agreeing to the transaction in case redemptions
19 came in at such a high level?

20 A. The only thing I saw was a reference to
21 this might be an exposure, didn't quantify the
22 exposure. And the other things that I looked at
23 was what was the consequence of the cost of the
24 capital structure and the redemptions on the

1 liquidity and solvency of the company, which was
2 not good.

3 Q. Did you take into account that the
4 company had \$65 million in cash in the ESOP that
5 it was going to use to fund the first year
6 redemptions of about \$110 million?

7 A. I took into account the state of the
8 balance sheet and the relative solvency of the
9 company.

10 Q. Did you take into account that the board
11 knew the ESOP had \$65 million in cash that could
12 be used to fund \$110 million in redemptions at the
13 end of 2004?

14 A. That could be used to contribute to the
15 funding of 105 million dollars' worth of
16 redemptions? Is that your question?

17 Q. Yes.

18 A. Because it wasn't 110.

19 Q. Were you aware that the ESOP had that
20 level of cash --

21 A. Not of the cash. I was strictly looking
22 at the state of the balance sheet of the company
23 and its solvency.

24 Q. And you're also aware that that

1 liability is not on the company's balance
2 sheet; is that correct?

3 A. Yes. We discussed that earlier.

4 Q. Well, we discussed the fact -- I'd like
5 to know whether or not you felt that to be
6 irregular based on your experience or lack
7 thereof?

8 A. I'm happy to be informed of that, and
9 thank you.

10 Q. Okay. Did you take into account, in
11 coming to your opinion, the advice that the
12 Deloitte & Touche firm gave the board in regard to
13 the 2003 transaction?

14 A. No.

15 Q. Do you dispute the board's entitlement
16 to rely on the advice it was given by Deloitte &
17 Touche?

18 MS. ANDREW: Objection.

19 A. Unless I know exactly what the advice
20 that Deloitte's been giving, it'd be hard for me
21 to say that they're not -- let me answer your
22 question specifically. Are they entitled to
23 listen to Deloitte & Touche is your question, and
24 the answer is yes, sure.

1 Q. And is the board entitled to listen to
2 reports and advice it was getting from Houlihan
3 Lokey?

4 A. They're entitled to listen to that,
5 although I think the Houlihan Lokey report was a
6 fairness opinion produced in common valuation
7 methods using customer valuation methods about the
8 share price as if it was an arm's length
9 transaction.

10 Q. And you understand that because there
11 were ESOP shares involved, this was like an arm's
12 length transaction since there had to be some
13 assurance that the 850 strike price was within a
14 range of fair market value at the time?

15 A. Understand perfectly. My difference
16 here, if I may, is that -- is that by comparison,
17 it was a private equity fund, for example. No one
18 would buy a company for that price and have a
19 capital structure where 100 percent of the owners
20 of the equity can redeem out their shares in a
21 matter of three years. It's a lot of volatility
22 to have on a balance sheet and in a company.

23 Q. So do you believe that Houlihan Lokey,
24 Deloitte & Touche, and Duff & Phelps all made

1 serious errors here in their advice to the board?

2 A. I do.

3 Q. And did you review any of their work
4 product --

5 A. I just --

6 Q. -- in coming to that decision?

7 A. -- reviewed the -- the -- the outcome --

8 Q. It's a yes or no answer. You've not
9 reviewed any of the work product that any of those
10 three advisors undertook in formulating the advice
11 they gave to the board by way of fairness opinion
12 or otherwise; isn't that right?

13 A. That's correct.

14 Q. Okay. You recognize that all three of
15 those advisors are at the top of their field and
16 nationally known for what they do?

17 A. I absolutely know that.

18 Q. Yeah. And you don't take issue with the
19 fact that a board of directors is entitled to
20 listen to and rely upon the opinions and views
21 expressed by advisors that the board reasonably
22 believes are within the competence of the
23 particular expert or advisor they're relying
24 upon; is that right?

1 A. That's correct.

2 Q. Okay. And did you, in forming your
3 opinion, take into account any advice or any other
4 communications that any of Deloitte, Duff,
5 GreatBanc, or Houlihan were communicating to the
6 board directly or indirectly?

7 A. In what period?

8 Q. 2003.

9 A. Only what was reported in the various
10 summaries and complaints and a variety of other
11 things and testimony.

12 Q. The truth of the matter is that you've
13 never seen any of the advice or the basis for the
14 advice that any of those advisors gave to the
15 board?

16 A. The truth of the matter is I have not
17 seen the reports.

18 Q. Nor have you seen any of the underlying
19 work product?

20 A. True.

21 Q. In coming to your opinion that the 2003
22 tender offer was poorly thought out and reckless,
23 did you take into account the income tax savings
24 that the company anticipated realizing over the

1 ten-year window of the transaction?

2 A. I took into account that if -- if you
3 have a lot of assumptions, you can make anything
4 work in a -- in a -- in an Excel spreadsheet.

5 Q. Did you look at any of the assumptions
6 that the board considered and its advisors used in
7 concluding the level of the tax savings the
8 company would realize?

9 A. I certainly understood that they
10 believed there would be substantial tax savings.

11 Q. That wasn't my question. Did you look
12 at any of the assumptions you've just criticized?

13 A. I've criticized the outcomes.

14 Q. The question is, did you ever see any of
15 the assumptions any of the advisors made or that
16 the board made in regard to the tax savings the
17 company was projected to realize over ten years?

18 A. The only thing I've seen is what they
19 thought they would -- they would accrue in their
20 benefit in terms of --

21 Q. In other words, the answer is no, you've
22 never seen the assumptions -- the underlying
23 assumptions made; is that right?

24 A. That's right.

1 Q. I want to move to your second opinion,
2 and that is the dual-track was detrimental to the
3 company.

4 A. Mm-hmm.

5 Q. What's the basis for that opinion?

6 A. A variety of exhibits, emails,
7 discussions, and treaties from Mr. Morgan to the
8 Special Transaction Committee and treaties from
9 Mr. Morgan's lawyer at Deckard -- I guess Jerry
10 Schwartz or whatever his name was -- that, in
11 fact, the -- it was even detrimental to their
12 process and asked the Special Transaction
13 Committee to -- to stand them down, in fact even
14 got them to do it, so...

15 Also from communications concerning --
16 from the -- the various counter-parties in the --
17 potential counter-parties in the transaction; the
18 private equity funds getting phone calls from
19 Mr. Pollack and then immediately calling
20 Mr. Spencer at Houlihan to say, What is going on
21 here?

22 Yeah, I think there's a lot of -- a lot
23 of information that this was a -- was creating a
24 lot of issues and a lot of drag on the process and

1 a lot of confusion.

2 And confusion, let me be clear, is not
3 confusion that -- that -- that very smart people
4 who are these counter-parties, which they tend to
5 be mostly lawyers and profes- -- and finance
6 professionals who are running the private equity
7 firms; the confusion is that is -- is -- is that
8 it created a -- an environment in which it would
9 have been very hard to figure out whose -- whose
10 -- whose information should be used, who should --
11 who has the decision power inside the company, and
12 what currents inside the company might -- might
13 derail certain levels of efforts and so on. So
14 there's a lot of that in this -- in this -- in the
15 documents.

16 Q. Did you see any evidence that any
17 particular potential bidder for the company was so
18 confused by those issues you just identified?

19 A. It's my experience --

20 Q. I'm not asking for your experience; I'm
21 talking about this record. Do you see any
22 evidence in this record that any specific
23 potential bidder labored under the confusion, the
24 inability to recognize who the decision makers

1 were and who was authorized to put information out
2 into the marketplace and it affected their
3 decision whether or not to make a bid?

4 A. Well, very few made a bid, so it would
5 be -- but there were few that were -- certainly
6 had -- had -- that were very frustrated with the
7 process because of it.

8 Q. Such as?

9 A. It comes to my -- Marlin, for example,
10 Capital was certainly frustrated by the process.
11 There were others. There was -- there were --
12 I'll think of them, but there were others as well.

13 Q. I'd like you to think of them.

14 A. Yeah, I'm -- I'm working on it. I
15 just -- don't immediately come to mind.

16 Q. Well, let's sit here and wait.

17 A. Okay. We can wait. Well, Marlin comes
18 to one -- to mind. There were certainly -- well,
19 the GSC thing was a different issue. The lenders
20 themselves were having problems with it. Those
21 were -- those were the -- that's the one I have to
22 mind right now.

23 Q. And what detriment did Marlin's
24 confusion cause to the process?

1 A. Well, they eventually -- you know, they
2 eventually backed out of the -- of the process. I
3 think --

4 Q. What evidence do you have that Marlin
5 backed out of the process?

6 A. Well, at the end in -- I think in the
7 spring -- late spring of 2008, they eventually
8 left the process.

9 Q. Do you know why?

10 A. Yeah. I think they're -- they're --
11 apart from the frustration there, I think one of
12 the principal reasons was the Whitney exclusivity
13 requirements and some of the Whitney --

14 Q. Well, that really is the reason why
15 they --

16 A. Well, as I said, I --

17 Q. The Whitney exclusivity provisions was
18 the real reason why Marlin dropped out of the
19 process; isn't that true, sir?

20 A. It appears to be the principal reason,
21 yes. But let me -- if I may, it was certainly the
22 case so much so that Mr. Schwartz, who was
23 Mr. Morgan's attorney, and Mr. Morgan wanted
24 Houlihan to stop doing anything for any -- and

1 trying to go out to the market for anything
2 post-December 31st, 2012 -- 2007.

3 So it was clearly creating a problem.
4 And it was also creating a problem in that it was
5 the -- the dual-track, as it were, was also
6 delaying decisions because there was a lot of time
7 spent looking at un-executable transaction models
8 and offers made by Morgan and Candlewood.

9 Q. How much time did the Special
10 Transaction Committee spend on looking at
11 Mr. Morgan and Candlewood's proposals?

12 A. Looks like a fair amount. In fact --

13 Q. I don't know what that means. What's a
14 fair amount?

15 A. I don't have the hours. All I know is
16 that when you're looking at the various
17 transactions and even at one point kind of saying,
18 okay, this is the one we're going to look at even
19 though it was -- the capital structure was way too
20 expensive for the cash flow.

21 Q. Which one was that?

22 A. GSC.

23 Q. Did you take into account that the
24 secured lenders supported the Special Transaction

1 Committee providing exclusivity to Candlewood to
2 close the GSC transaction?

3 A. I take that into account except that as
4 they started looking closer at the transaction, it
5 became pretty clear that it was not executable.

6 Q. That wasn't the question. You're aware,
7 of course, that the secured lenders in the ESOP
8 trustee encouraged the board to put aside the
9 Whitney, Marlin -- Whitney and Marlin and Monomoy
10 letters of intent and instead focus on GSC and
11 pursue that transaction through a 30-day
12 exclusivity?

13 A. I'm aware that it would have been -- if
14 they could have found a way to do that with taking
15 out \$31 million of their -- of their -- of their
16 loans, that that might be attractive to them and
17 that they -- but -- but executionally, it was
18 never going to happen.

19 Q. Well, that may or may not be, but --

20 A. It was.

21 Q. -- you need to look at decisions that
22 are made at the time. What I'm asking you is if
23 you took into account, in terms of the Special
24 Transaction Committee's consideration of the GSC

1 deal, that they were encouraged to do so and to
2 give Candlewood 30 days of exclusivity by the
3 secured lenders and by the ESOP trustee?

4 A. I'll grant that.

5 Q. Okay. And that once that 30-day period
6 expired and the GSC deal didn't close, the Special
7 Transaction Committee again began considering the
8 letters of intent by Whitney, Monomoy, and Marlin,
9 correct?

10 A. Yeah, there was -- primarily, I would --
11 what -- April/May period.

12 Q. Now, you're aware that the 30-day
13 exclusivity period for GSC occurred in about March
14 of 2008?

15 A. Yes.

16 Q. Do you know what Whitney's offer was as
17 of that date?

18 A. Um...

19 Q. If I told you 44 million, would that
20 refresh your recollection?

21 A. It wouldn't. I don't recall the 44
22 million. I remember the 54 million.

23 Q. Okay.

24 A. That 363 offer.

1 Q. Yeah. Well, I'll represent to you that
2 the Whitney LOI that was in the Special
3 Transaction Committee's hands in March of 2008 was
4 for \$44 million. But that's not refreshing your
5 recollection?

6 A. No, it's not.

7 Q. I'll represent to you it was. You are
8 aware, of course, that three months later, Whitney
9 came in at \$10 million higher in May of 2008 --

10 A. I am.

11 Q. -- correct?

12 Fair to say that possibly the process
13 actually increased the bids that the Special
14 Transaction Committee was getting rather than in
15 some way hurt the Special Transaction Committee
16 over the process?

17 A. I don't think it's fair to say that. I
18 think that there was -- there were -- Houlihan was
19 actively engaged with finding 363 -- it looks like
20 all three -- I think there was Monomoy, the
21 Marlin, and Whitney were looking to do a 363 sale,
22 because of all the -- the baggage of the company,
23 it was the cleanest way to get through, and that
24 those, themselves -- that Houlihan were effective

1 in -- in -- in negotiating with them to get a
2 better deal out of Whitney, and even that Marlin
3 thought they had a better deal, and that -- and
4 would agree to a -- to a -- to a non-exclusivity
5 for the period because they thought they had a
6 better deal.

7 But I think those were more of an effort
8 later on after many, many -- going back and forth
9 to try to find, in quotes, consensual deal, all of
10 which were at valuations two times or greater than
11 what the market was saying to them. And there was
12 a lot of market transactions out there that -- the
13 market was fairly well scoured by -- by Houlihan.
14 There was 172 people contacted -- groups
15 contacted.

16 Q. Was that before the distress group came
17 into the picture or after Steve Spencer --

18 A. Well, there was --

19 Q. -- after Steve Spencer came into the
20 picture?

21 A. There were two phases. The first one
22 was about a little over -- I think it was 101
23 contacts for the first phase of Houlihan. And
24 when Steve Spencer's group came in for the

1 distress group, there was an additional 70, more
2 or less.

3 Q. And during the first phase, Candlewood
4 was not an issue at all, correct? They weren't
5 out in the market, and Mr. Morgan was not a bidder
6 at that point; is that right?

7 A. I'm trying to recall. There was a --
8 there was a point -- I'm not sure exactly the
9 date. There was a point at which there was a
10 carve-out that Candlewood and Mr. Morgan requested
11 of three funds that Houlihan wouldn't go out to,
12 and I'm not exactly sure when that was, but it was
13 sometime in that '07/early '08 period.

14 Q. So as we sit here today, you can't
15 delineate for me the phase of the transaction
16 where Houlihan was looking for strategic or
17 financial buyers versus the phase of the process
18 where Houlihan then went out and was looking for
19 more buyers in the more distressed marketplace?

20 A. Yeah, I certainly can. I mean, there
21 was phase 1 when they were first hired. Houlihan
22 was first hired in the -- in 2007 in either -- I
23 think March, and then -- and then after much
24 effort to try to find --

1 Q. March 2007?

2 A. Yes. -- much effort to try to find a
3 strategic and/or a private equity buyer, the --
4 and with no -- with no results, they ended up
5 moving over to the distress group run by Steve
6 Spencer -- the engagement was run by Steven
7 Spencer.

8 Q. And in the first phase, you don't have
9 any evidence that Mr. Morgan or Candlewood were
10 out in the market trying to find bidders that they
11 could bring to the Special Transaction Committee,
12 correct?

13 A. I think that's correct, yes.

14 Q. Okay. After, in the second phase, do
15 you know how many potential bidders Houlihan
16 brought to the Special Transaction Committee?

17 A. Second phase?

18 Q. Yes.

19 A. Yeah, I do. There were -- there were
20 three.

21 Q. Okay. And during that second phase, one
22 of those bidders, Whitney, increased its offer
23 from 44 million to 54 million between March and
24 May of 2008, correct?

1 A. Yes, that's what... I'm -- I'm taking
2 what you're representing that the original offer
3 was 44.

4 Q. So if in that period -- and that's a
5 period in which Candlewood was also canvassing the
6 market for potential bidders; is that correct?

7 A. It was the period in which they were
8 trying to find financing for the consensual deal,
9 as they called it.

10 Q. And it's during that period that
11 Houlihan and Whitney presented an increased offer
12 to the company after Candlewood had been in the
13 market, correct?

14 A. Yes. I wouldn't make the nexus -- I'm
15 not sure there's causality specifically there, to
16 be -- to be honest with you, so...

17 Q. What would cause them to increase the
18 offer?

19 A. Because Monomoy and Marlin were also
20 actively bidding for the market.

21 Q. And what bids were they making, based on
22 your recollection of the evidence?

23 A. I'm not exactly -- and don't remember
24 exactly. It was under -- Marlin was certainly

1 under -- I think it was in the 40s -- mid 40s --
2 was under where -- where Whitney was.

3 Q. Yes.

4 A. And Monomoy I don't recall specifically.

5 Q. Monomoy and Marlin were always under
6 where Whitney was.

7 A. Yes.

8 Q. He has a 45 million --

9 A. That's my recollection. That's my
10 recollection.

11 Q. Is there any room in your mind for the
12 proposition that Candlewood's participation in the
13 process and the competition engendered, as
14 Mr. Spencer recognized in his deposition, actually
15 was in whole or in part the reason that Whitney
16 came in with a higher offer three months after its
17 \$44 million offer in March of '08?

18 A. You're asking if there's any room in my
19 mind, and the answer would be I don't think that's
20 what happened.

21 Q. Well, I'm not asking you what you think
22 happened. Is there any room in your mind for that
23 proposition?

24 A. That's a very strange question. You're

1 asking me -- you're asking me do I -- am I capable
2 of imagining that that -- that there is this
3 causal nexus occurring between these events and
4 between Candlewood's activity, and the answer is
5 anything's possible.

6 Q. True. That's what I'm asking.

7 A. That's my answer.

8 Q. You're also imagining a causal nexus
9 between anything Candlewood did and some sort of
10 detriment to the process.

11 A. I'm not imagining what -- what happened.
12 It's from what I could gather from the testimony
13 and various reports and documents.

14 Q. Whose testimony?

15 A. Well, let me go back. From certainly --

16 Q. Let me just try to give you some
17 background. Your report contains no citation to
18 any evidence in the record. It contains a lot of
19 caustic language, but there's no citation to any
20 email, to any deposition testimony, to any other
21 particular document. Am I right about that?

22 A. Yes.

23 Q. Is there a reason you didn't cite any of
24 the evidence that you were relying upon?

1 A. Well, I knew that all the documents were
2 going -- that I reviewed were going to be
3 available and -- and that everybody was relatively
4 familiar with the case and that they would know
5 what I was talking about.

6 Q. But I don't know what you're talking
7 about, so that's why I'm asking you to provide me
8 with any specific evidence you can think of that
9 Candlewood's participation in the process was
10 detrimental to the -- to the Special Transaction
11 Committee's ability to deliberate on the
12 transactions that were being brought to it for
13 consideration.

14 A. My consideration is that it caused the
15 board -- and I used the phrase "to dither" -- to
16 spend time with things that weren't going
17 anywhere; that anybody could recognize initially
18 that they weren't going anywhere. An Article 9
19 transaction, for example, was initially
20 contemplated by Candlewood and Morgan in the fall
21 -- in the, I guess, early winter/late fall of
22 2007.

23 Q. Let's focus on that. Do you know how
24 much time the Special Transaction Committee took

1 to consider that deal?

2 A. I don't. I just -- you know, my -- my
3 intuitions -- and you'll have to -- that's what I
4 was going on, is that you're spending a lot of
5 time going back and forth to see whether or not
6 something would work in those circumstances.

7 Q. So is it right that basically your
8 opinion that the dual-track was detrimental to the
9 company is just based on your intuition?

10 A. No, that's not correct.

11 Q. Okay.

12 A. When -- if I can give a more elaborate
13 answer. When you have a substantial private
14 investment banking firm who handles the largest
15 middle market private equity firm probably in the
16 world --

17 Q. Well, you talked about dithering, and so
18 I want to understand if you --

19 A. Well --

20 Q. I need your --

21 A. I don't get a chance to finish?

22 Q. No.

23 A. Okay.

24 Q. What I'd like to know is if you took

1 into account the amount of time -- you just
2 mentioned the Article 9 transaction -- the Special
3 Transaction Committee took in evaluating the
4 Article 9 transaction that Candlewood proposed?

5 A. I don't know the exact amount of time.
6 I don't even -- I don't have an approximation of
7 the amount of time.

8 Q. Okay. If the committee took less than
9 48 hours from the time they received the offer to
10 rejecting it, in your mind is that considered
11 dithering?

12 A. If it was 48 hours, I wouldn't consider
13 it dithering.

14 Q. Okay. Let's look at another transaction
15 known as the Antioch Acquisition Company offer.
16 Do you recall that one that Candlewood made to the
17 Special Transaction Committee in November 2007?

18 A. Refresh me, but I'm sure I do.

19 Q. It was the first offer that Candlewood
20 brought to the --

21 A. Right.

22 Q. -- Special Transaction Committee.

23 A. Mm-hmm.

24 Q. Okay?

1 A. Yeah, I do.

2 Q. If I told you that the committee,
3 between the time it received the offer and
4 rejected the offer, took 72 hours, would you
5 consider that dithering?

6 A. I'm considering that it certainly
7 appeared to be a waste of time.

8 Q. Three days?

9 A. I live in a different world. I live in
10 a world where you've got a marketplace, and you
11 have a lot of valuations coming in not even close
12 to any of those numbers. It's a stretch for me to
13 believe that you should be spending a lot of time
14 on things that are just, on the face of it,
15 un-executable.

16 Q. That's what I'm asking you. It seems to
17 me that the Special Transaction Committee, for
18 example, received an offer from the Antioch
19 Acquisition Inc. Company on November 5th, 2007,
20 and rejected on November 8th, 2007.

21 Did you take the three-day period into
22 account when you said that the Special Transaction
23 Committee was dithering?

24 A. Let me -- let -- may I give a more

1 elaborate answer?

2 Q. You need to answer my question, which is
3 whether you took into account that the Special
4 Transaction Committee took a total of three days
5 to review and reject that proposal?

6 A. Specifically, the answer would be no.
7 The concatenation of all these offers, the time
8 spent in deference to Mr. Morgan and family on
9 many offers that none of which made any sense is
10 -- my view is, in total value, dithering.

11 Q. Okay. Well, let's -- you see, it's easy
12 to make very general statements, but you need to
13 back those up with some sort of factual basis.
14 Okay? So there were four total offers that
15 Candlewood brought to the Special Transaction
16 Committee. You're aware of that, correct?

17 A. There's two memos... Yeah, that's about
18 -- that sounds right.

19 Q. Four.

20 A. That sounds right.

21 Q. The first one was on November 5th, 2007,
22 and the committee responded November 8th, 2007,
23 rejecting it. You were unaware of that time
24 frame, correct, as we --

1 A. Yes.

2 Q. Okay. The Article 9 transaction was
3 presented to the committee at a board meeting on
4 February 6th, 2008, and rejected on February 10th,
5 2008. Were you aware of that timing?

6 A. The timing again, please?

7 Q. February 6th, response mailed February
8 10th, four days. Did you take into account what
9 else the committee was doing during those four
10 days when you claim that they were dithering?

11 A. Did I take into account -- they were
12 certainly involved with other Houlihan things
13 coming through.

14 Q. All right. The next deal is a GSC term
15 sheet that was submitted on March 11th, and the
16 company accepted that offer and granted
17 exclusivity on March 14th, a total of three days.
18 And at that time, the committee was encouraged to
19 do so by the ESOP trustee. Do you recall that?

20 A. I do.

21 Q. And the committee couldn't execute any
22 deal without the approval of the ESOP trustee
23 which at the time was Reliance. Are you aware of
24 that?

1 A. I don't remember it as Reliance. That's
2 where I'm stuck. I thought it was --

3 Q. Maybe it's Evolve.

4 A. It's Evolve. Reliance was out of there
5 by the end of 2007.

6 Q. You're right. I misspoke.

7 A. Yeah. The answer's yes.

8 Q. Okay. And they, in fact, granted
9 exclusivity based on the encouragement of the
10 secured lenders and the ESOP trustee, correct?

11 A. Yes.

12 Q. Do you have any -- take any issue with
13 that grant of exclusivity in light of what the
14 ESOP trustee and the secured lenders were asking
15 the board to do?

16 A. Please rephrase.

17 Q. Do you take any issue with the Special
18 Transaction Committee's grant of exclusivity to
19 Candlewood with regard to the GSC deal in light of
20 the preference expressed by the ESOP trustee and
21 the secured lenders that they, in fact, provide
22 Candlewood with the 30-day exclusivity?

23 A. You're asking me if I have any issue
24 with it? The -- early on in that transaction,

1 there was a fair amount of worry over whether or
2 not the company's capital structure -- the company
3 could pay for the post-transaction capital
4 structure with GSC. And that soon shook out as
5 again one more un-executable offer at a value way
6 in extent of anybody else's.

7 Q. That might be, but what I'm asking you
8 is this: Did the Special Transaction Committee
9 make any error in heeding the suggestion of the
10 company-secured lenders and the ESOP trustee, who
11 had ultimate veto rights on the transaction, to
12 grant exclusivity to GSC because they felt it was
13 the best offer on the table at the time?

14 A. Yeah, I do -- I do have an issue with
15 that.

16 Q. Okay. What should they have done?

17 A. I think what needed -- before they got
18 into an exclusivity agreement, knowing what the
19 transaction would look like, they should have been
20 working through all the -- the post-transaction
21 financial statements to see whether or not this
22 thing would cash flow appropriately and so on.

23 I mean, the ultimate value of that offer
24 in terms of just -- in terms of fixed charge

1 for -- for debt service was generally in extent --
2 including principal and interest was generally
3 equal to or greater than the EBITDA of the prior
4 following year. So, yeah, they should have looked
5 at it.

6 Q. And do you know that they did not?

7 A. I -- you know...

8 Q. You don't know one way or another what
9 they looked at?

10 A. No, obviously these people looked at it
11 and said, We're not sure that this capital
12 structure is going to -- going to be affordable
13 for the company. I mean, that would be prior to a
14 30-day exclusivity. That's the point I'm making.

15 Q. And what about the bank and the ESOP
16 trustee; do you also criticize their view of the
17 various offers that were available to the
18 special --

19 A. No.

20 Q. -- transaction committee at the time?

21 A. Senior lender wants to find a way to get
22 his money back. The ESOP trustee, in my view, was
23 very naive and was looking for anything that would
24 provide some type of value for the ESOP and -- you

1 know, but those were not to happen.

2 Q. And you're familiar with the MAMAMO
3 deal --

4 A. I am.

5 Q. -- submitted on June 2nd and rejected on
6 June 4th --

7 A. Yeah.

8 Q. -- 48 hours?

9 A. And run again later on and brought back
10 out.

11 Q. I wasn't aware of that. But the MAMAMO
12 deal was presented on June 2nd and rejected on
13 June 4th, correct?

14 A. Yes. There was -- because it was -- it
15 required the concessions from the bank that
16 weren't going to happen, and it was generally --

17 Q. Well, I understand that. I'm focused on
18 the Special Transaction Committee's, quote,
19 unquote, dithering because it seems to me that you
20 have a total of fewer than ten days that they
21 spent, at least in part, on the Candlewood offers
22 other than the GSC deal --

23 A. I think --

24 Q. -- and over -- that's over a one-year

1 period.

2 A. Yeah. There's -- there's -- the larger
3 of the issue is that despite all evidence to the
4 contrary -- and there was a substantial amount of
5 evidence about valuation at the time -- the offers
6 were rejected, particularly the Whitney offer at
7 the end.

8 That was the best offer because there
9 was some hope that there was some congenial
10 creative offer available to the Morgans with some
11 magic by Candlewood that it was going to work.
12 And it -- and it -- and it -- and it pulled the
13 entire board and the trans -- Special Transaction
14 Committee continually, so -- and I don't think
15 that's -- I don't think that's in question. It
16 did.

17 Q. Well, the Special Transaction Committee
18 at the end of the day chose to pursue what you
19 conceive was the best deal available at the time,
20 and that was Whitney's 54 million --

21 A. Right.

22 Q. -- dollars, correct?

23 A. Yes.

24 Q. And as far as we know, at the time

1 Candlewood was involved in the process, Whitney
2 actually increased its offer \$10 million, correct?

3 A. You're making causality. I don't think
4 there is, but...

5 Q. Well, I'm talking about facts.

6 A. Well, those aren't -- that isn't a fact.

7 Q. The fact is that Whitney's offer was
8 44 million in March of '08, and it was 54 million
9 in May of '08.

10 A. So -- okay. But I would -- I would
11 argue that they're not -- that the reason that the
12 Whitney offer is -- is -- it's likely that there
13 were other 363 bidders in the market.

14 Q. You don't know one way or the other?

15 A. And neither do you.

16 Q. Well, but I'm not the expert here.
17 You're testifying. You don't know one way or the
18 other --

19 A. I don't.

20 Q. -- is that correct?

21 A. I don't.

22 Q. Okay.

23 A. But I wouldn't make that conclusion.

24 Q. Right. In fact, you can't make any

1 reasonable conclusion about why the Whitney deal
2 increased from 44 million to 54 million, correct?

3 A. Not beyond what I believe.

4 Q. Okay. The fact of the matter is that
5 the Special Transaction Committee pursued a deal
6 with Whitney --

7 A. Yes.

8 Q. -- isn't that right?

9 A. Yes.

10 Q. Okay. And do you know whether or not
11 any definitive agreement was ever executed?

12 A. There was an APA.

13 Q. I don't know what APA means.

14 A. Asset purchase agreement.

15 Q. Okay. Have you ever seen an executed
16 asset purchase agreement?

17 A. It was never executed.

18 Q. Correct. Do you understand that there
19 were numerous contingencies to Whitney's \$54
20 million offer and that that money wasn't in the
21 bank or you couldn't count on bringing in \$54
22 million until the APA, as you called it, was
23 actually executed by both sides?

24 A. That's true of any transaction, yes.

1 Q. Right. For reasons unrelated to
2 Candlewood's participation in the process or the
3 dual process, ultimately the Whitney deal did not
4 close; is that right?

5 A. The Whitney deal did not close because
6 Ken Lenoir from Evolve in conjunction with the
7 trust folks from the sub trusts for Mr. Morgan --

8 Q. Was that Ms. Lewis -- Ms. --

9 A. Kim was the -- Kim Lewis Wilson --
10 Lipson-Wilson was the trustee of the sub trust.

11 Q. Mm-hmm.

12 A. -- got together and fired the board to
13 eliminate the transaction.

14 Q. And Mr. Lenoir was going to exercise the
15 trust right to vote 85 percent of the shares to
16 remove the board. He didn't need Ms. Lipson-
17 Wilson's --

18 A. That's what happened. I'm just saying
19 what happened -- what he -- there's communication
20 between them. Can you get the -- Mr. Morgan's sub
21 -- the sub trust to vote with them, and that
22 happened.

23 Q. Who said that?

24 A. I believe it's a memo from -- there was

1 -- from Lenoir to Ms. Wilson.

2 Q. Okay. Mr. Lenoir, though, could have
3 taken that action and removed the board without
4 Ms. --

5 A. Not disputing that.

6 Q. -- Wilson's --

7 A. Not disputing that.

8 Q. You're not disputing that.

9 And that's the only reason, as far as
10 you can tell on the record, that the Whitney deal
11 did not close?

12 A. What fact are we saying is related --

13 Q. Mr. Lenoir's decision to vote 85 percent
14 of the shares he controlled to remove the board of
15 directors that was considering finalizing a deal
16 with J.H. Whitney. Is that right?

17 A. It was -- let me restate what I think
18 you said. Because he could vote 85 percent and
19 took that decision that he didn't want to do the
20 Whitney deal, that he had the power to do
21 that? Is that what you're suggesting?

22 Q. He had the power to do that; in fact,
23 exercised the power --

24 A. Yes.

1 Q. -- to veto --

2 A. Absolutely.

3 Q. -- the deal?

4 A. Mm-hmm.

5 Q. Okay.

6 A. Agreed.

7 Q. What I'd like to know is that -- well,
8 actually, what I'd like to -- what I'd like to
9 confirm is that there's nothing about Candlewood's
10 participation in the process that somehow led the
11 company not to close a deal with Whitney at
12 whatever price ultimately would have been
13 negotiated?

14 A. My answer to that is that to the extent
15 that there were parties in the company, including
16 Mr. Morgan and supported by Candlewood, that
17 believed that somehow there was another deal out
18 there that would avoid the 363 sale and ownership
19 by a -- by a private equity fund through the aegis
20 of a 363 auction, whoever turned out to be the
21 buyer, that there's somehow something else that
22 would provide value to the other constituencies,
23 including the former non-ESOP shareholders'
24 subordinated debt, including the ESOP redemption

1 debt that had piled up, and including the ESOP
2 shareholders themselves.

3 Because there was some thought that this
4 value was somehow out there if we just would find
5 it, it caused, I think, substantial harm to the
6 company and, in fact, did. And, in fact, the
7 better opportunity -- and because that was always
8 a current in this whole process, they -- they
9 decidedly missed the other opportunities and --

10 Q. What other opportunities did they miss?

11 A. Well, they should have -- they should
12 have closed on the Whitney deal, in my view, is
13 what you're asking me.

14 Q. Right. But they could not because 85
15 percent of the --

16 A. Agreed.

17 Q. -- shares were voted to remove the
18 board --

19 A. Agreed.

20 Q. -- before you could even see whether --

21 A. Right.

22 Q. -- that deal could be closed, correct?

23 A. Right. And if there was a -- a -- if
24 there was a material view of what was going on

1 instead of it being kind of a fantasy fulfillment
2 on trying to get a hundred-plus-million dollars of
3 value out to every -- so that everybody could
4 participate, whether it was convergent to
5 preferred shares or it was some type of
6 recharacterization of warrants.

7 And so a sub debt, whatever it was, was
8 something that I think dragged the company all
9 over the place through '07 and '08 and certainly
10 through the last half of '07 and '08 until it went
11 into a prepackaged bankruptcy in November of '08.

12 Q. What I'm not following, though, is that
13 at the end of the process in May '08, the company
14 did have a letter of intent for \$54 million from
15 Whitney?

16 A. Right.

17 Q. And there's no evidence that the company
18 could have gotten anything better than that in May
19 of 2008 whether or not Candlewood was in the
20 process?

21 A. We keep referring specifically to
22 Candlewood, but it was Morgan and Candlewood. It
23 was Mr. Morgan who was looking to get the better
24 deal. And -- and Lenoir, in my view, acting --

1 not really thinking through everything, thinking
2 somehow he was going to get relief of some sort
3 for -- for his constituency in this process made a
4 decision that I think was dramatically ill advised
5 at the time.

6 Q. Well, I understand, but what I -- your
7 opinion was that the dual-track was detrimental to
8 the company where the company, in May of '08, had
9 a \$54 million deal --

10 A. Right.

11 Q. -- that it could accept or reject --

12 A. Right.

13 Q. -- and it pursued that deal until the
14 ESOP trustee voted shares to remove the board,
15 correct?

16 A. Yes, that's true.

17 Q. Is there any evidence that the company
18 could have gotten any better deal than the 54
19 million as of May 2008 but for Candlewood's
20 participation in the process?

21 A. That's a question that's very hard for
22 me to really answer, because I'm not sure you're
23 characterizing what I'm saying in the way that I
24 intended, so maybe let me try it again. I

1 believe --

2 Q. Well, do you believe the company could
3 have gotten a better deal than Whitney's
4 \$54 million deal in May 2008 if Candlewood and
5 Mr. Morgan were not participating in the process?

6 A. It's hard to know.

7 Q. You don't know one way or the other?

8 A. Yeah, of course not.

9 Q. Okay.

10 A. How could I know?

11 MR. SCHEIER: Let's take a short break.

12 (A break was taken for lunch, and
13 Attorney Miller left the deposition for the day.)

14 Q. (By Mr. Scheier) Sir, the third opinion
15 I heard you say was that the Levimo lease, given
16 the context, acted as a poison pill?

17 A. I did say that.

18 Q. That's a criticism, I take it?

19 A. That's my opinion.

20 Q. Okay. Fair enough. Let's look at your
21 report. If you could, turn to page 13.

22 A. Mm-hmm.

23 Q. And I want to focus on some of your
24 remarks on page 14.

1 A. Okay.

2 Q. At the top, you write (as read) At some
3 point after negotiating the final lease,
4 W.P. Carey decided to back out of the deal
5 presumably in response to the perceived financial
6 instability of the tenant, parens, the company,
7 close parens, comma. Do you see that?

8 A. I do.

9 Q. You have no evidence at all or have seen
10 none that that is, in fact, a reason that
11 W.P. Carey pulled out of the deal?

12 A. That's why I used the word "presumably."

13 Q. Okay. So the answer is you have no
14 evidence of that at all; it's just your guess?

15 A. That's my presumption, yes.

16 Q. That's your guess?

17 A. That's my presumption.

18 Q. That's your guess, correct?

19 A. You characterize it the way you want to.
20 It's my presumption.

21 Q. Well, can you point to any evidence
22 supporting your presumption?

23 A. Yeah. The presumption was not just a
24 guess. The presumption is based on some -- some

1 -- some issues that, (A), they did back out; (B),
2 the company was a questionable credit at the time;
3 and then in addition to that, I add to the fact
4 that the credit markets were starting to seize up
5 in the commercial real estate markets.

6 Q. Well, I understand that as a reason you
7 gave. I'm wondering whether you saw any evidence
8 in the case that you reviewed -- email, letter,
9 communication in any way, shape, or form --
10 indicating that W.P. Carey decided to back out
11 because of the financial -- perceived financial
12 instability of Antioch?

13 A. As I said, it says presumption, so
14 there's no change in my point of view about what I
15 said.

16 Q. You believe that -- you said something
17 about the company being a bad credit, did you say?

18 A. I didn't mean bad credit. I did say
19 that, but let -- I can -- let me retract that.

20 That -- that -- the way most real estate
21 leases will go, they need to be -- there's usually
22 a lender involved with the acquisition of the real
23 estate property, and that given what was going on
24 in the company, that -- that there may be some

1 question from the lender's point of view as to
2 whether or not this is a good lease to be entering
3 into and a good deal to be financing on behalf of
4 Carey.

5 Q. Did you look at any documents generated
6 by W.P. Carey other than the lease?

7 A. No. Again, this was a presumption.

8 Q. Okay. You also reference tightening
9 credit markets which by 2007 were already
10 retreating from commercial markets. Do you see
11 that?

12 A. Yes.

13 Q. Do you generally believe that in 2007,
14 the credit markets were tightening in regard to
15 various other lending areas in addition to
16 commercial real estate?

17 A. What my perception of that period was is
18 that the real estate markets were tightening well
19 ahead of other credit markets which really hit
20 the -- hit the wall in 2008. But 2007 and '6 was
21 already some -- some drawback of credit and
22 commercial real estate.

23 Q. The next paragraph says (as read)
24 Although the lease, parens, there was just one

1 lease for both properties, close parens, in most
2 respects is what would be expected of a
3 commercial, slash, industrial property, it does
4 contain some unusual out-of-market provisions.
5 Did I read that correctly?

6 A. You have.

7 Q. What market are you referring to there?

8 A. I'm talking -- the market is -- when I
9 say out of market, it's an expression to me that
10 it's something that is unusual relative to what
11 you'd expect in the market.

12 Q. What market?

13 A. Commercial real estate lease market.

14 Q. So in your mind, there's just a single
15 market covering the entire United States?

16 A. In my mind, there is a generalization
17 that -- that this is unlike anything else I've
18 seen and that it was out of market.

19 Q. But what market, is what I'm wondering?

20 A. Well, it's presuming it's the United
21 States, things that I'm most familiar with.

22 Q. Okay. And the first example you give is
23 Section 3(f)... Do you see that?

24 A. I do.

1 Q. ...of being out of market.

2 Prior to looking at the Levimo lease,
3 have you ever seen anything similar to 3(f), which
4 I think you term, and maybe rightfully so, as a
5 single -- single lease provision?

6 A. (No response.)

7 Q. In other words, a single lease covering
8 multiple properties; in this case, two?

9 A. I'm not sure that's what I'm
10 characterizing. I know that that's what it is --

11 Q. Okay.

12 A. -- and refer to that.

13 Q. Have you ever seen that before?

14 A. I'm trying to think. I don't know that
15 I have or haven't. I just -- I've dealt with a
16 lot of leases, but... Yeah, actually, I have a
17 client that has a single lease for two properties
18 right now.

19 Q. Do you consider that client's lease to
20 be out of -- unusual, out of market in that
21 regard?

22 A. But I -- I'm not saying it's out of
23 market for that -- in that regard, but I've never
24 -- that's not the intention of what I've said

1 here.

2 Q. Well, I'm sorry, your report says "It
3 does contain some unusual out-of-market
4 provisions." And it's followed by "For example,
5 Section 3(f) of the lease attempts to" -- do you
6 see what I'm saying in Section 3(f)?

7 A. (No response.)

8 Q. What Section 3(f) says is that it's a
9 single lease for two properties and is indivisible
10 in that regard, correct?

11 A. Um...

12 Q. Let me take a step back. Are you saying
13 that Section 3(f) is not an out-of-market
14 provision?

15 A. Well, why don't you let me answer first.

16 Q. Well, I withdrew the question and asked
17 you a new one.

18 A. Well, you didn't --

19 Q. That's the right I have.

20 A. You should let me know.

21 Q. I just did let you know.

22 A. Okay. Thanks. Yeah, I think what I'm
23 specifically referring to (reading) it's a single
24 lease with respect to each and every parcel land

1 improvements and equipment included and shall not
2 be or deemed to be divisible or separable --
3 severable into separate lessor -- leases for any
4 purpose whatsoever; and tenant, on behalf of
5 itself, and any such trustee or legal
6 representative, hereby waives any right to claim
7 or assert a contrary position in any action or
8 proceeding.

9 And what I'm referring to goes back to
10 the paragraph that we're referring to which was
11 that the ability under -- in bankruptcy to decide
12 on whether or not to retain or reject an executory
13 contract.

14 Q. And do you consider yourself having a
15 level of expertise in that regard?

16 A. I've worked on bankruptcies.

17 Q. Are you aware that under Minnesota law,
18 a single lease for multiple properties is a valid
19 contract and enforceable as such?

20 A. I'm not aware of that.

21 Q. Okay.

22 A. But that's not the point I'm making.

23 Q. No, but I'll -- we'll get to the point.

24 Are you aware that bankruptcy courts routinely

1 enforce provisions such as this as long as it's
2 valid under the particular state law that controls
3 the lease?

4 A. I'm -- well, I'm not --

5 Q. It's a yes or no question.

6 A. The answer is -- is no, specifically.

7 Q. You're not aware of that. Okay. Very
8 good.

9 Are you also aware that the bankruptcy
10 scope contains a provision, Section 365(f), that
11 allows a bankruptcy court to invalidate such a
12 clause if it was put in specifically for the
13 purpose of frustrating a reorganization?

14 A. (Indicating.)

15 Q. I'm asking if you're aware of it. You
16 don't have to wave your hand at me or shake your
17 head. I'm asking if you're aware of that
18 provision.

19 A. I'm -- I'm -- I'm now aware of it.

20 Q. You understand that Section 3(f) in the
21 Levimo lease is an enforceable legal contractual
22 provision? Or you have no reason to doubt that,
23 do you?

24 A. I have no reason to doubt it. My

1 reference was to the 363 action, and the 363 are
2 under -- in the bankruptcy.

3 Q. And you're now aware that if it was a
4 provision that would prevent reorganization, the
5 bankruptcy court has the authority to invalidate
6 that provision?

7 A. I'm now aware that's what you told me.

8 Q. You also note in the next paragraph that
9 the lease also contains rigorous lease assignment
10 definitions. Do you see that?

11 A. I do.

12 Q. And you go on to say -- you go on to
13 refer to a provision that requires landlord
14 consent with regard -- or a change of control
15 provision, I should say?

16 A. Mm-hmm.

17 Q. Okay. But you can see that the
18 provision that you're referring to in the lease,
19 which I believe is Section 21, paragraphs J and K,
20 do not contractually subject the company to
21 landlord consent to effect a change in control; is
22 that right?

23 A. I'm agreeing that it's true, yes.

24 Q. If you go a little further down in that

1 paragraph, it's about the fifth line up from the
2 bottom, it begins "And any potential acquirer of
3 the company..."

4 A. Mm-hmm.

5 Q. You write "And any potential acquirer of
6 the company would immediately understand that an
7 assignment of the lease was a condition precedent
8 to closing an acquisition, as would the company
9 when looking to sell to a third-party buyer."

10 Wouldn't you agree, based on what you
11 claim to be some experience in commercial real
12 estate leases, that in virtually every case, there
13 would have to be an assignment -- such an
14 assignment of the lease?

15 A. Absolutely agree to that.

16 Q. Okay. Nothing unusual there?

17 A. Most leases require assignment.

18 Q. So if you look at the last paragraph of
19 that section, you write (as read) These, quote,
20 poison pill, closed quote, terms. What terms are
21 you talking about?

22 A. (No response.)

23 Q. Is it Section 3(f) and Section 21?

24 A. Not 3(f). 3(f) --

1 Q. Is it just Section 21? Is that the
2 poison pill?

3 A. I'm referring specifically to the
4 rigorous assignment clauses.

5 Q. Is that Section 21?

6 A. If that's what you say, yeah, whatever I
7 cited.

8 Q. That's all?

9 A. Yes.

10 Q. Okay. And when you state in that last
11 paragraph that Lee Morgan -- that these poison
12 pill terms are unfairly -- unfairly favor the
13 landlord, Lee Morgan, and clearly were intended to
14 make the company less attractive to potential
15 purchasers in the future, did you see any
16 testimony or documentary evidence in the record
17 other than your interpretation of the lease terms
18 that support that statement?

19 A. What I saw at the time when this was all
20 -- when this --

21 Q. Sir, I'm asking you for evidence in the
22 record that that was Mr. Morgan's intention.

23 MS. ANDREW: And I'd object because he
24 started to answer your question and you

1 interrupted him. So, you know, let him answer the
2 question.

3 A. There is nothing in the record that says
4 that's his intention...

5 Q. Thank you. Was --

6 A. ...that I read.

7 Q. -- there any... That you recall?

8 A. That I read or recall.

9 Q. Okay. Is there anything in the record
10 that you've seen where any potential purchaser you
11 can identify pointed to the Levimo lease as making
12 the company less attractive as a potential
13 acquisition?

14 A. Well, considering that the -- that the
15 actual bids -- it got down to two at the end. And
16 in those bids, in fact, there was discussion as to
17 whether or not there was too much real estate and
18 some potential to recharacterize leases under --
19 in Chapter 11. Apart from that and other
20 discussions about --

21 Q. Here's my question: Can you identify
22 any potential purchaser that identified what you
23 phrase to be the one poison pill term in the
24 contract as making the company a less attractive

1 acquisition?

2 A. None of the offers got that far.

3 MR. SCHEIER: Could you read back the
4 question, please?

5 (The question was read back.)

6 A. No.

7 Q. The fourth opinion is that the post-
8 transaction balance sheet contributed to the
9 company's inability to address its problems. Do
10 you remember that?

11 A. I do.

12 Q. What post-transaction balance sheet are
13 you referring to?

14 A. I'm referring to the post-transaction
15 balance sheet.

16 Q. Does that post-transaction balance sheet
17 appear in your report?

18 A. I think it's summarized at different
19 points in the report, yes. There was a negative
20 \$78 million in shareholder equity. There was a
21 variance year over year from 2002 to 2 -- 2003 to
22 2004, I think that's the measure I used, of \$165
23 million of variance in shareholder equity. There
24 was -- in addition to that, there was a current

1 assets and measurements --

2 Q. Well, I asked you to point that to me in
3 the report. If you can --

4 A. Well --

5 Q. Sir, take a deep breath and relax a
6 second. Can you point to me a particular balance
7 sheet? Not in various parts of the report where
8 you say things; I'm looking to know whether any of
9 the tables in your report --

10 A. Sure.

11 Q. -- is the balance sheet you're referring
12 to.

13 A. (Examining document.) Let me go...
14 Bear with me. (Examining document.) Yeah, here's
15 a high -- I'm sorry. Yes. Here's a high level on
16 page 7, and you'll see 2002 to 2003 variances --

17 Q. I just asked you to point it out. So on
18 page 7 at the bottom --

19 A. At the bottom. There's a schedule on
20 the bottom where I do a high level breakdown of
21 the total assets and liabilities and shareholder
22 equity.

23 Q. All right. Very good. Let's get to
24 that in a second. Keep that page open. I'd like

1 to ask you this: In coming to the opinion that
2 the post-transaction balance sheet contributed to
3 the company's inability to address its problems,
4 you are aware that throughout 2004 and part of
5 2005, the company was doing well enough to prepay
6 a significant portion of its secured debt ahead of
7 schedule? Were you aware of that in rendering
8 your opinion?

9 A. Give me the periods again. I'm sorry.

10 Q. 2004 and part of 2005, post-transaction.

11 A. Paid down its senior debt?

12 Q. If you consider senior debt to be the
13 secured debt that the company borrowed to
14 effectuate the 2003 transaction, then yes.

15 A. No, not completely aware -- no, not
16 aware of that.

17 Q. You were not aware of that?

18 A. Hmm-mm.

19 Q. Were you aware that in 2005, the CFO of
20 the company, Barry Hoskins, was able to
21 renegotiate the loan terms to get a lower interest
22 rate and higher debt-to-equity debt ratios that
23 benefited the company because it had been
24 performing ahead of schedule under its loan

1 | agreements?

2 | A. I'm not aware of that.

3 | Q. Were you aware that between the close of
4 | the transaction and the summer of 2008, the
5 | company had never missed a payment to either its
6 | secured or unsecured creditors, both trade debt
7 | and debt arising out of the transaction?

8 | A. I am aware of that.

9 | Q. Okay. Were you aware that the company,
10 | after the transaction, continued to invest money
11 | in new product lines and new innovations that, if
12 | you might have read Sandra Borstad's deposition,
13 | you would -- she described it as being exciting or
14 | energizing the field?

15 | A. I'm aware that there was investment made
16 | in a digital product of some sort and -- and with
17 | mixed results and...

18 | Q. What evidence can you point to that
19 | there were mixed results?

20 | A. Just -- just what was -- what was stated
21 | in the various documents.

22 | Q. What documents, sir?

23 | A. Well, they're in the exhibits. I'd have
24 | to -- I'd have to find time to go do that.

1 Q. We can look at the exhibit list right
2 now. Can you point them out?

3 A. I can't point it out based on the --

4 Q. You can't point to me a single document?

5 A. That's not what I said. I said I can't
6 point it out based on the exhibit list.

7 Q. In preparing for this deposition, you
8 didn't look at the documents that were the basis
9 for this opinion?

10 A. I looked at all the documents.

11 Q. Okay. So I'd like to know which
12 documents you're deriving your view you just
13 expressed --

14 A. Well --

15 Q. -- that the innovation met with mixed
16 results.

17 A. I'll give a variety of contexts.

18 Q. The only context I need is evidence,
19 documents, or testimony. That's the question
20 right now.

21 A. Well, I can give you where it shows up
22 in various statements from a variety of private
23 equity funds, from Houlihan Lokey, as well as
24 Candlewood.

1 Q. What Houlihan Lokey document are you
2 speaking of?

3 A. I don't recall the exact report, but
4 there was several kinds of reports where they kind
5 of laid out the -- summarized the -- the history
6 that they've been -- since they've been involved
7 with the company.

8 Q. Do you realize all the lawyers around
9 this room represent clients that were asked by
10 Ms. Andrew over and over again about events in
11 2003, many, many years ago, and they remembered
12 these events, and I'm asking you about documents
13 you referred to in writing a report in the last 60
14 days, and you can't point me to a single
15 document --

16 MS. ANDREW: Objection.

17 Q. -- other than generalities?

18 MS. ANDREW: Objection. You're
19 mischaracterizing his testimony and your own
20 clients' testimony because there was a heck of a
21 lot they did not remember. He's trying to tell
22 you that he can point to exhibits --

23 MR. SCHEIER: I'm not asking you any
24 questions, Marsha.

1 MS. ANDREW: -- and you won't let him
2 answer the question. I know you're not.

3 Q. (By Mr. Scheier) I'd like to know --

4 MS. ANDREW: But you're badgering the
5 witness --

6 Q. I'd like to know what the problem --

7 MS. ANDREW: -- and we're not going to
8 continue doing that.

9 Q. -- why you can't recall documents you
10 looked at in the last 60 days that support this
11 report.

12 A. You're asking me why I can't recall?

13 Q. You can't.

14 A. You're asking me why I can't -- you just
15 asked me why I can't recall, and I can't answer
16 you why I can't recall. I can only say that I
17 can't recall specifically, but they're there.

18 Q. Okay. Fair enough.

19 A. Okay?

20 Q. Did you analyze or take a look at any of
21 the company's expenditures between 2004 and 2008
22 for product development?

23 A. Not specifically, no.

24 Q. Generally?

1 A. I followed what was -- the documents
2 that were in here and the various statements and
3 valuations and so on.

4 Q. Well, generally, what did you understand
5 -- what did you derive from these documents you
6 looked at in regard to the amount of money the
7 company was investing in new product development
8 after the transaction?

9 A. What I derived was there was some effort
10 to invest in certain new products.

11 Q. Did you compare whether that effort to
12 invest in new products was comparable to what
13 other companies in the same marketplace were
14 investing in new products?

15 A. I certainly did not.

16 Q. Did you take a look at all to determine
17 whether or not the rate by which Antioch was
18 paying back its secured debt was similar to other
19 comparable companies in that marketplace at the
20 same time in regard to how they were handling
21 their secured debt?

22 A. That would be unobtainable information.

23 Q. Did you take a look in analyzing
24 Antioch's post-transaction performance generally

1 at the performance during the same time period of
2 any comparable company in the marketplace?

3 A. No. I just looked at what they did.

4 Q. Are you able to conclude whether or not
5 Antioch's financial performance was different than
6 the financial performance of any of its
7 competitors in the scrapbooking or memory
8 preservation marketplace during the 2004 to 2008
9 time frame?

10 A. No.

11 Q. What other problems can you identify
12 that the company was unable to address because of
13 its post-transaction balance sheet?

14 A. What other problems?

15 Q. I mean, what problems? They were paying
16 their debts on time. They were developing
17 product.

18 A. Well, look, I deal with balance sheets
19 in companies all -- every day of the week and have
20 for years. The problem was that the company was
21 de-equitized. The problem was that all the cash
22 was not making it back into equity into the
23 company or into working capital of the company.
24 It was going out the door.

1 Q. Well, how much -- how much cash was
2 going out the door?

3 A. Well, we can -- I can back into it if
4 you'd want to -- but certainly, for purp- -- happy
5 to provide that for you.

6 Q. Did you do that calculation?

7 A. I just looked -- what I've looked at is
8 I looked at whether the current assets were in the
9 company and looked at the current asset position,
10 which would be an indication of whether the -- how
11 well the company would be able to pay its bills in
12 the short term.

13 Q. And --

14 A. I've looked at the balance sheet and
15 looked at where a shareholder's equity was and the
16 preponderance of both funded debt and short -- and
17 subordinated notes and ESOP notes. The balance
18 sheet was a -- was a train wreck.

19 Q. The balance sheet might have been a
20 train wreck, but you're talking about a balance
21 sheet that looked at assets based on book value,
22 correct? Did you ever do an analysis of the
23 balance sheet looking at the assets at market
24 value -- at fair market value?

1 A. The auditors certainly weren't prepared
2 to do that.

3 Q. I'm not asking you about the auditors.
4 I'm asking about you, sir.

5 A. Well, if you're asking me, you would
6 have to attribute certain goodwill to the company
7 in order to -- to try to figure out what that is.
8 But that goodwill, I would think, would be
9 substantially diminished if you had a proper
10 forecast as to what would possibly happen with 800
11 out of 1,115 employees leaving the company and
12 redeeming in a period of three years.

13 Q. You can pontificate on the record and
14 talk to me all you want about the number of
15 employees that left. I'm asking you whether you
16 analyzed the company's balance sheets looking at
17 its assets as fair market value as opposed to book
18 value?

19 A. Well, as I said --

20 Q. Did you or did you not?

21 A. I didn't because --

22 Q. Did you at all look at how much cash or
23 whether the company, in fact, did use cash to pay
24 salaries and to develop new products?

1 A. I know that they did.

2 Q. Okay. So not all the cash went to pay
3 secured debt and unsecured debt, did it?

4 A. Substantial amounts of it did.

5 Q. How much? What percentage of the
6 company cash went to pay secured debt and debt to
7 ESOP note holders versus cash that was used to
8 fund new product development initiatives, for
9 example?

10 A. For example -- and the way I approached
11 it -- and --

12 Q. First answer my question, not the
13 question you want me to ask you. I'm asking you
14 what percentage of the company cash was used to
15 pay senior secured debt and ESOP note debt
16 relative to the amount of cash used, for example,
17 to develop new products after the transaction?

18 A. I don't know offhand.

19 Q. Okay. Did you look at any evidence in
20 the record at all that tracked the company's cash
21 flow, both the inflow of cash and the expenditures
22 for which the company used the cash that it
23 generated?

24 A. No.

1 Q. Your next opinion is that the board of
2 directors should have known and contemplated that
3 the three-year put right was a dramatic mistake
4 that led to the demise of the company.

5 We've now seen that you misinterpreted
6 what the three-year put right was, correct?

7 A. My conclusion would be the same anyway.
8 The same thing happened. Whether I was
9 technically correct or otherwise, the same result
10 happened. You had 800 of 1,115 employees leave
11 the company with \$190 million of obligation -- of
12 value leaving the company as a result.

13 Q. What about the put right, as you now
14 learned that it is, that you can make -- I think
15 you were big in the morning session with talking
16 to me about causal nexuses.

17 What experience do you bring to bear to
18 make the conclusion that the put price protection
19 agreement that the company entered into with the
20 ESOP trustee is what incentivized employees to
21 leave the company? What about that put price
22 protection agreement -- what terms incentivized
23 the employees to leave the company?

24 A. What incentivized the employees to leave

1 the company are the following --

2 Q. I'm asking you what about the put price
3 protection agreement?

4 A. Well, the put price protection agreement
5 certainly laid down -- laid down a track for
6 these, even on that document, for one year. They
7 had 105 million leave in the first year.

8 Q. Well, you understand, don't you, sir,
9 that the people that left the first year left
10 based on an independent valuation of a purchase
11 price that was --

12 A. Higher.

13 Q. -- \$49 in excess of the floor price?

14 A. And 31 percent ahead of the BVI
15 valuation from the previous year.

16 Q. And you're aware that the 2002 price
17 that you're referring to, which is about 680 a
18 share, was 30 percent higher than the 2001
19 purchase price, are you aware of that?

20 A. Very aware, yes.

21 Q. Were you aware that, in fact, a 25 to 30
22 percent increase in the value of Antioch shares
23 from year to year was standard for the seven years
24 before 2003?

1 A. Yes. However -- can I finish the
2 however? You're going to let me do that, right?
3 The however is --

4 Q. I didn't answer yet your question, but I
5 will let you complete your sentence.

6 A. However, the difference is now the
7 company is a substantially different company.
8 It's dramatically altered because of the
9 transaction.

10 There was -- there was the view it's an
11 ESOP, yet everybody was a shareholder that worked
12 for the company in view of what had happened with
13 the founders and other entity -- other players
14 that were involved with the -- with the -- with
15 the tender offer transaction.

16 And you had a substantial increase in
17 price of the shares, and you also saw a balance
18 sheet that was decimated by the transaction,
19 and -- and you saw the owners walk out with \$120
20 million minimally.

21 Q. The owners stayed, correct? No one
22 walked out; the owners stayed?

23 A. The \$120 million left the company.
24 Okay? That doesn't include the warrants and --

1 Q. The company did receive shares back for
2 that 120 million --

3 A. I understand.

4 Q. -- dollars, correct?

5 A. I understand.

6 Q. Very good.

7 A. So you saw that happen --

8 Q. Well, that is correct, the company got
9 something back in return for the \$120 million,
10 correct?

11 A. Sure. They got back in return a
12 disaster of a balance sheet and with the ability
13 to get out now on their own because they saw what
14 had happened.

15 Q. Well, I do understand that you want to
16 use a lot of adjectives and describe things, but
17 as we've noted, regardless of the balance sheet,
18 the company operated for five years post-
19 transaction by paying all its debts, paying all
20 its employees, developing new product, and
21 continuing to be a market leader.

22 So your adjectives aside, we kind of
23 have a more simple question here. Prairie Capital
24 valued the company's stock at 894 as of

1 December 31, 2003. You understand that to be the
2 case, correct?

3 A. Yes.

4 Q. Did you review Prairie Capital's work
5 product and work papers in coming to that
6 valuation?

7 A. I didn't, but I understand how they did
8 the valuation.

9 Q. How did you come to that understanding
10 without looking at their work papers?

11 A. Because I've seen other valuations
12 they've done, and it's fairly standard, so...

13 Q. Okay. So nothing -- nothing unusual
14 about that valuation as far as you can tell;
15 you're assuming it was done properly and done
16 above board, correct?

17 A. The valuation was done on a fair market
18 value.

19 Q. And that's necessary under the law for
20 an ESOP --

21 A. I understand.

22 Q. -- correct?

23 A. There was no discount for lack of
24 marketability. I understand that there's inherent

1 put right. The difference is that that would
2 presume least -- most fair market value valuations
3 are done on a -- on a -- on a balance sheet
4 neutral basis.

5 The basic -- primarily done on a free
6 cash flow basis without the assumption of the
7 impact of the debt or anything else. It's what --
8 it's what a financial buyer might acquire the
9 company for.

10 No financial buyer would have bought the
11 company where 100 percent of the shares could have
12 been put in a period of three years. That
13 wouldn't happen.

14 So to me, the relative -- the relevance
15 of the valuation relative to what the total -- to
16 the company is -- is somewhat -- somewhat marginal
17 in terms of what the total -- what was going on.

18 Q. You just keep talking and not really
19 answering questions.

20 A. I thought I did.

21 Q. No, I don't think you did. The first
22 question was -- this was all prompted by your
23 broad remark that you don't care what the put
24 price protection agreement was; it somehow

1 incentivized employees to leave the company.

2 A. Obviously, it did.

3 Q. Well, what's so obvious about it? Are
4 you -- do you have any expertise in regard to
5 repurchase obligation projections?

6 A. I have -- when I look at the company --

7 Q. Yes or no?

8 A. The answer's no.

9 Q. Okay. Did you interview any employees
10 to determine why they chose to leave the company?

11 A. No.

12 Q. Okay. Did you take into account any
13 personal factors that would lead an employee to
14 decide whether or not to leave a company?

15 A. All 800 of them?

16 Q. One of them.

17 A. Let's talk about all 800.

18 Q. No. There's evidence in the record of
19 why certain employees left the company. Did you
20 review that evidence before making your broad
21 comment?

22 A. I looked at 800. It's a substantial
23 percentage of the total.

24 Q. And your mantra is 800. All I'm

1 asking --

2 A. It's a big number.

3 Q. -- is what about the...

4 A. Individually? No.

5 Q. Your opinion is that the purchase --
6 that the put price protection agreement --

7 A. And the transaction.

8 Q. That wasn't your opinion. Your opinion
9 was the board of directors should have known and
10 contemplated that the three-year put right was a
11 dramatic mistake that led to the demise of the
12 company. I would like to know -- and your basis
13 in your report was that it set a floor. It
14 guaranteed a price for three years.

15 We've now learned that's not what that
16 provision has done. But you're going to stick
17 with your opinion, not even understanding what the
18 put price protection agreement was, that it
19 somehow led to the demise of the company.

20 I would like you to tell me what aspect
21 of the put price protection agreement as it was
22 actually effectuated led to the demise of the
23 company.

24 A. Um...

1 Q. Go ahead.

2 A. Oh, you're ready for me?

3 Q. I'm always ready for you.

4 A. I hope so. My view is that the put
5 price guarantee, even -- even if modified here by
6 this agreement -- by the -- this disclosure
7 agreement --

8 Q. It wasn't modified by anything.

9 A. Well, no, no, if I modify my point of
10 view by that. That's what I meant.

11 Q. Does it modify your point of view now
12 that you've seen the actual put price --

13 A. It doesn't -- it doesn't modify my point
14 of view about what happened algorithmically in the
15 company. That, it does not do.

16 Q. Well, let's -- algorithmically meaning
17 the 800 employees leaving?

18 A. Yes, and the \$105 million of redemptions
19 in the year immediately following the transaction.

20 Q. Okay. Let's handle that in a moment. I
21 just would like to know if you can point me to any
22 aspect of the put price protection agreement that
23 led to the demise of the company.

24 It used to be that there was a

1 three-year floor. We've learned that there was no
2 such thing.

3 A. Mm-hmm.

4 Q. I will tell you that the floor was
5 irrelevant in the first year because fair market
6 value came in above --

7 A. Higher.

8 Q. -- the floor; and the second two years,
9 all the employees got was fair market value plus a
10 small kicker of \$21 and then \$12 per share.

11 Understanding that, what about the put
12 price protection agreement led to the demise of
13 the company?

14 A. Well, I'll just take for that -- that --
15 105 -- well, better than 50 percent of it went out
16 in a matter of one year, I mean... And yeah, I
17 grant there was -- at a higher value, which I
18 still find inexplicable, and -- and that continued
19 on. And in view of the fact of what happened with
20 all the founders' equity and how much money was
21 taken out of the company and in view of the
22 balance sheet, people were compelled to leave the
23 company, yet people making, you know, under a
24 hundred thousand dollars a year --

1 Q. I know it's hard for you to say so, but
2 basically there's nothing you can point to in the
3 put price protection agreement that incentivized
4 anyone to leave the company; isn't that right?

5 A. First, I'm not saying -- let me back up
6 two seconds. What I'm saying that incentivized
7 them to leave the company was a very good price on
8 the stock, in addition to the fact that they saw
9 what the founders had taken out and in addition to
10 the fact that it's an ESOP, the numbers were
11 available, and they saw what happened to the
12 company's financial profile. And those are the --
13 in aggregate, the incentives to have left the
14 company and get out while it was time to get out.

15 Q. Your opinion was the board of directors
16 should have known and contemplated that three-year
17 put right was a dramatic mistake that led to the
18 demise of the company. Is that still your
19 opinion?

20 A. I certainly would modify it somewhat
21 based on what I've just said.

22 Q. Okay. You didn't modify it.

23 A. I did.

24 Q. Okay. Did you see any evidence in the

1 record that the payments to the non-ESOP
2 shareholders through the tender offer incentivized
3 anyone to leave the company?

4 A. There's -- no. There's no -- there's
5 no --

6 Q. Thank you.

7 A. -- direct causal --

8 Q. Thank you.

9 A. -- of discussions that I saw.

10 Q. Did you see any basis in the record to
11 speculate as to why any individual employee left
12 the company between 2004 and 2007?

13 A. No.

14 Q. Okay. Do you know of the 800 employees
15 in what year how many employees left?

16 A. I know what the financial outcomes were
17 per year. That's it.

18 Q. And when you talk about \$109 million in
19 redemptions --

20 A. 190.

21 Q. Well, I'm talking about the first year.

22 A. It was 105.

23 Q. Well, it wasn't. It was higher than
24 105. But you do -- you recognize the company

1 | didn't need to come up with \$105 million in cash
2 | to satisfy that obligation in 2004?

3 | A. We discussed that before.

4 | Q. Do you realize that to be the case?

5 | A. I realize that there was \$65 million to
6 | pay the additional off balance sheet funding in
7 | the ESOP to handle some of the redemptions.

8 | Q. And do you also understand that what
9 | remained after the \$65 million was used was spread
10 | out over five years with the company only having
11 | to come up with 20 percent of that balance in cash
12 | to pay those that redeemed their shares in 2004?

13 | A. Say it again, please.

14 | Q. That the company, after using the \$65
15 | million that was in the ESOP, leaving about \$40
16 | million in liability, was able to fund those
17 | redemptions with just 20 percent of the 40 million
18 | and a note for the balance?

19 | A. Yes, generally.

20 | Q. And in your view, why does the departure
21 | of 800 employees, why did that lead to the demise
22 | of the company?

23 | A. Well, let's just -- let's just -- the --
24 | in my view, the 800 is, first, a substantial

1 number which indicates that I'm correct or largely
2 correct about the incentives and the disincentives
3 to stay that existed at the same time. So I think
4 that's what it's an indication to me of.

5 Q. Did you take any look at whether any of
6 those employees chose to leave the company because
7 of the continuing decline in sales of the company?

8 A. I definitely understood that in the
9 later years, there was -- the revenue was dropping
10 off fairly briskly and that there were reductions
11 in force that occurred as a result.

12 Q. When you say later years, what do you
13 mean?

14 A. You know, if I recall, you know, '05,
15 '06, you know, things were starting -- there was a
16 -- there was some deterioration in revenue. In
17 '04, it really didn't get really more -- it became
18 more dramatic in the later years.

19 Q. Do you know how many of the 800
20 employees left in 2005 and 2006?

21 A. I don't know the exact number. I just
22 know the total count and the -- and the amount of
23 capital income obligations, so...

24 Q. So you didn't analyze how many employees

1 left in any given year, correct?

2 A. No.

3 Q. And you didn't analyze what incentivized
4 those employees to leave?

5 A. I -- I -- based on what I saw and what I
6 read and what I surmised, that they left because
7 they -- it was the time to get out.

8 Q. Okay. It had nothing to do, though,
9 with the put price protection agreement?

10 A. It had to do with the fact that --
11 certainly in the first year that -- what was that?
12 Did you say 894 a share? -- that it was time to
13 leave given where the state of the company was in
14 terms of the change of the balance sheet, in terms
15 of the -- what the founders did in taking out
16 equity. I understand that you believe that was in
17 exchange for stock and that's what happened.

18 Q. No. What I'd like to know is what
19 evidence you have that any employee, be it one or
20 a dozen or whatever number, left because the
21 non-ESOP shareholders exchanged their shares for
22 cash as part of the transaction?

23 A. There was no -- there's nothing in the
24 evidence or the documents that I had that suggests

1 that specifically.

2 Q. Okay. The next opinion you have is that
3 various offers by Candlewood were demonstrably
4 over market value of company. Did I get that
5 right?

6 A. Sounds right.

7 Q. We've already dealt with that, though.
8 The Special Transaction Committee ultimately
9 rejected three of those four offers, and the
10 financial backer for the fourth withdrew its
11 support; is that correct?

12 A. They withdrew their support, but there
13 was also a fair amount of skepticism on the senior
14 lenders at the time, that they weren't going to be
15 able to effectively afford the capital structure
16 that was being suggested.

17 Q. That's the GSC deal you're talking
18 about?

19 A. That's correct.

20 Q. What evidence are you referring to? Did
21 you see an email?

22 A. There were emails. There was --

23 Q. Okay. Can you -- can you describe for
24 me who wrote the emails or what dates were on

1 those emails?

2 A. There was emails back and forth, I
3 believe. I can't remember the dates. It's when
4 the transaction was being looked at, which would
5 have been, I would think, in the early part of
6 '08, something like that and -- maybe it was late
7 '07. But the -- Steven Spencer of Houlihan had
8 brought it up. There was -- it showed up in a
9 list of summaries of what had gone on.

10 Q. Did you review Mr. Spencer's deposition?

11 A. I'm trying to think. Did I review his
12 deposition?

13 Q. Well, let me be --

14 A. Yeah.

15 Q. -- more specific. Did you review --

16 A. Yeah, I believe I did.

17 Q. Did you review Mr. Spencer's testimony
18 that he supported providing Candlewood with a
19 30-day exclusivity because at the time it was the
20 best deal presented to the Special Transaction
21 Committee?

22 A. Yeah.

23 Q. Ring a bell?

24 A. It does.

1 Q. Do you recall seeing emails during the
2 relevant time period that the secured lenders
3 likewise thought that the deal that Mr. Morgan
4 brought to the Special Transaction Committee
5 through Candlewood was better than the Whitney
6 deal, was better than the Monomoy deal, and was
7 better than the Marlin deal?

8 A. I wouldn't characterize it that way.
9 What I --

10 Q. Well --

11 A. Are you going to let me finish, or do
12 you want to ask another question?

13 Q. Yeah, I was going to ask you if you --

14 A. Sure.

15 Q. -- if you recall specifically what was
16 said in those emails?

17 A. What I recall in the emails was that
18 they were going to take a look at it because it
19 took \$31 million of their obligation off the
20 books, off the table, and that they were willing
21 to take a look at it from that, but there was
22 skepticism about -- there was skepticism about the
23 ability to pay for the capital structure that was
24 being proposed, on the one hand --

1 Q. Were these emails prior to the time that
2 Candlewood was granted the exclusivity?

3 A. It was at the point the first -- the
4 proposal was made, if I recall.

5 Q. Which would have been before exclusivity
6 was granted to Candlewood; is that what you're
7 saying?

8 A. I'm not saying that. If you...

9 Q. Sir, I'm handing you what's been marked
10 as Exhibit 205. It's an email from Anita Brown to
11 a number of officers and directors of the company
12 along with others including the turnaround
13 specialist from CRG. Do you see that?

14 A. I see the email.

15 Q. If you turn to the second page, there's
16 a draft resolution there for the board.

17 A. Mm-hmm.

18 Q. Do you see it? The first clause
19 references letters of intent received from
20 Whitney, Marlin, and Monomoy.

21 A. I do.

22 Q. Do you see that the second paragraph
23 references the GSC proposal that Mr. Morgan made
24 to the Special Transaction Committee through

1 Candlewood?

2 A. Mm-hmm.

3 Q. Yes? Do you see that?

4 A. I do.

5 Q. Do you see the third paragraph where the
6 committee notes that it delivered copies of the
7 letters of intent from Whitney, Marlin, and
8 Monomoy and the GSC proposal to both the secured
9 lenders?

10 A. Mm-hmm.

11 Q. You call them senior lenders because
12 that's what they're called here. And Evolve
13 Bank & Trust is the ESOP trustee. Do you see
14 that?

15 A. I do.

16 Q. In the fourth paragraph, do you see it
17 states "Whereas, on March 13th, 2008, the senior
18 lenders communicated to the Special Committee the
19 senior lenders' preference for the terms and
20 transactions outlined in the recapitalization term
21 sheets over the terms of any of the acquisition
22 LOIs and requested that the Special Committee work
23 with the GSC to clarify certain terms in the
24 recapitalization term sheets and proceed to

1 negotiate with GSC the terms set forth in the
2 recapitalization term sheets."

3 Did I read that correctly?

4 A. I believe so.

5 Q. Any reason to doubt the accuracy of that
6 comment?

7 A. No.

8 Q. Do you see the next paragraph notes the
9 ESOP trustee's similar preference, that the
10 committee pursue the GSC transaction?

11 A. Mm-hmm.

12 Q. Now, these emails you're talking about
13 from the secured lenders, did they postdate this,
14 to the best of your recollection? This is dated
15 March 14, 2008, and "this" being the remarks in
16 Exhibit 205.

17 A. They may well have, and I'd have to
18 look.

19 Q. Well, would you agree that the lenders'
20 preference set forth in Exhibit 205 and the ESOP
21 trustee's preference set forth in Exhibit 205 that
22 the Special Transaction Committee pursue a deal
23 with Mr. Morgan and not Whitney or the other 363
24 proposals is consistent with Mr. Spencer's

1 testimony that as of March 14, 2008, the GSC
2 proposal was the best proposal the committee had
3 seen to date?

4 A. Are you asking me if it's consistent?

5 Q. Yes.

6 A. It appears to be consistent based on
7 what you've said to me.

8 Q. You don't hold a different view than
9 Mr. Spencer, the bank's, and --

10 A. I do.

11 Q. -- and Mr. Lenoir?

12 A. I do.

13 Q. You do. Okay. Fair enough?

14 A. Would you like to hear that?

15 Q. No, but I appreciate it's different.
16 They all must have been wrong, and you must be
17 right is, I guess, what the --

18 A. Occasionally that happens.

19 Q. -- what the view is. I figured. Okay.

20 The other three offers that Candlewood
21 brought to the table we discussed this morning.
22 Do you recall that?

23 A. I do.

24 Q. And they were all rejected by the

1 Special Transaction Committee in very short time
2 periods of between 24 and 72 hours. Is that your
3 recollection of what we looked at this morning?

4 A. Are we talking about the other offers
5 from Candlewood?

6 Q. The other three Candlewood offers.

7 A. I'll agree that's what you said to me in
8 terms --

9 Q. Do you have any reason to doubt the
10 timing that I gave you?

11 A. Well, I have a reason to doubt how you
12 would characterize what actually went on in terms
13 of what was spent and time spent, because in my
14 view, there was a lot of time spent chasing a
15 variety of offers, and it wasn't just when the
16 offer hit the table and when they decided on it.
17 There was a lot going on.

18 Q. Well, can you tell me some evidence of
19 what was going on -- well, actually, let's kind of
20 peg it to time frames. How about that? Because
21 you're giving some pretty significant opinions
22 here that are hurtful to a lot of people and to a
23 process, and you're Monday morning quarterbacking
24 it many years later. We should try to figure out

1 what evidence you have.

2 The first offer -- let me mark this and
3 see if we can actually peg it to dates and see
4 what you have to say.

5 (Deposition Exhibit No. 801 was marked.)

6 It's going to be Exhibit 801, and I put
7 that before you now. I'll represent to you that
8 this document in terms of its dates is accurate;
9 and, unlike your report, we've even given you
10 citations to the record for the assertions we're
11 making. So if you look at the first proposal,
12 which is Antioch Acquisition Inc., do you see
13 that?

14 A. Yes.

15 Q. That was made on November 5, 2007, to
16 the committee. Do you see that?

17 A. I do.

18 Q. And the Special Transaction Committee
19 Action was rejecting that offer on November 8,
20 2007. Do you see that?

21 A. I do.

22 Q. Did you analyze how much time the
23 Special Transaction Committee took as a
24 deliberative body along with its financial

1 advisor, Houlihan Lokey, in analyzing that first
2 transaction between November 5th and November 8th?

3 A. I did --

4 Q. Yes or no, sir?

5 A. I said I didn't.

6 Q. You did not. Do you have any evidence
7 that the Special Transaction Committee spent any
8 time on the Antioch Acquisition Inc. proposal at
9 any point prior to November 5, 2007?

10 A. No.

11 Q. Do you have any evidence that the
12 Special Transaction Committee spent any time
13 whatsoever after November 8, 2007, considering the
14 Antioch Acquisition Inc. proposal?

15 A. I don't.

16 Q. The next proposal that Candlewood -- and
17 you like when I use Mr. Morgan's name -- that
18 Mr. Morgan through Candlewood presented to the
19 Special Transaction Committee was what we term
20 here the Article 9 proposed transaction. Do you
21 see that, sir?

22 A. I do.

23 Q. That was presented to the Special
24 Transaction Committee on February 6, 2008, at a

1 meeting via PowerPoint presentation. Do you see
2 that?

3 A. Yes.

4 Q. Do you recall looking at that PowerPoint
5 presentation?

6 A. Absolutely.

7 Q. And the Special Transaction Committee
8 responded to that proposal by rejecting it on
9 February 10th, 2008. Do you see that, sir?

10 A. Yes.

11 Q. Did you analyze how much time and what
12 the committee did in deliberating over the Article
13 9 proposal with the Houlihan Lokey folks between
14 February 6th and February 10th?

15 A. I did not analyze the time.

16 Q. Okay. Do you have any knowledge of any
17 time the Special Transaction Committee spent in
18 considering the Article 9 proposed transaction
19 prior to February 6, 2008?

20 A. Well, there were a lot of emails back
21 and forth and discussions about what would happen
22 in an Article 9 transaction. So the specific
23 times of that I don't have.

24 Q. Not good enough for me. My question

1 is --

2 A. I'm just answering --

3 Q. -- can you identify any emails prior to
4 February 6, 2008, or any evidence that the Special
5 Transaction Committee concerned itself with a
6 potential Article 9 transaction prior to
7 February 6, 2008?

8 A. As I said, there were -- there were
9 several emails and discussions about what would
10 happen in an Article 9 from a variety of folks
11 involved, and I don't know what the actual dates
12 are.

13 Q. You don't?

14 A. I don't.

15 Q. So you can't point me to any specific
16 evidence that the Special Transaction Committee
17 spent more than a nanosecond considering an
18 Article 9 transaction prior to February 6, 2008,
19 when it was presented to them by Candlewood?

20 A. Well, that's kind of -- kind of an
21 interesting characterization. I'm not saying that
22 at all. I'm just saying I don't have any specific
23 dates that I looked at. I saw that there were a
24 lot of emails and a lot of correspondence.

1 Q. Who wrote the emails?

2 A. A variety of people.

3 Q. Give me some examples.

4 A. Ms. Moran. There were things from Steve
5 Spencer. There were things from Candlewood.

6 There were discussion in board -- amongst board
7 members in emails going back and forth.

8 Q. Sir, these are emails that you looked at
9 over the last 60 days?

10 A. Yes.

11 Q. You don't recall a single date on any of
12 them and whether they predated February 6th or
13 postdated February 6th?

14 A. I don't recall a single date.

15 Q. Okay. Do you have -- do you recall
16 seeing any evidence that the Special Transaction
17 Committee spent any time after February 10, 2008,
18 considering Candlewood's Article 9 proposal?

19 A. No, I don't.

20 Q. Okay. The next transaction on the list
21 is the GSC term sheet deal. Do you see that?

22 A. I do.

23 Q. We discussed that already, didn't we?

24 A. I think so.

1 Q. Okay. Then let's move on down to
2 MAMAMO. Do you see that the MAMAMO offer was sent
3 to the Special Transaction Committee on June 2nd,
4 2008, but delivered June 3rd?

5 A. Are you ask -- yeah.

6 Q. I misspoke. I will state that again.
7 Do you see that the MAMAMO offer was delivered to
8 the Special Transaction Committee on June 3rd of
9 2008?

10 A. I see that's what it says here.

11 Q. And do you see that the Special
12 Transaction Committee took action rejecting that
13 proposal the very next day on June 4, 2008?

14 A. I do.

15 Q. All right. Do you remember seeing any
16 evidence at all that the Special Transaction
17 Committee spent any time whatsoever considering
18 the MAMAMO deal prior to June 2nd, 2008?

19 A. (No response.)

20 Q. Deliberating over it, talking to the
21 Houlihan folks about it any time whatsoever prior
22 to June 2nd, 2008, sir? Any evidence?

23 A. No.

24 Q. Okay. Do you have any evidence

1 whatsoever that the Special Transaction Committee
2 paid any attention to the proposed MAMAMO deal
3 after June 4th, 2008?

4 A. There was another MAMAMO proposal that
5 came up that was substantively the same, and that
6 was also rejected.

7 Q. Okay. Do you know what date that was?

8 A. I'm thinking it was June, but it was
9 later in June. Something else came back up, and
10 there was a -- pretty much a -- no change, a
11 rejection on it.

12 Q. Are you thinking about a proposal MAMAMO
13 made to the board after Mr. Lenoir had exercised
14 his 85 percent of shares?

15 A. Yeah, I believe that's the one.

16 Q. Okay. Then you need to listen to my
17 questions. Okay?

18 A. Mm-hmm.

19 Q. I was talking about the Special
20 Transaction Committee. All right?

21 A. I apologize. Absolutely.

22 Q. MAMAMO made one proposal to the Special
23 Transaction Committee; is that right?

24 A. On that sequence, yeah, you'd be right.

1 Q. And within 24 hours, the Special
2 Transaction Committee rejected that offer?

3 A. Mm-hmm.

4 Q. And you have no evidence, do you, sir,
5 that the Special Transaction Committee spent any
6 time reviewing the MAMAMO proposal with its
7 financial advisors or in any other sort of
8 deliberative process before June 2nd -- or before
9 June 3rd, rather, or after June 4th?

10 A. No, but -- do I get a "but" in
11 here? But the whole concept of the consensual
12 deal at valuations that were always -- primary
13 predicate that it would be substantially more
14 because it would -- it wouldn't leave all the
15 other parties impaired was going on all the time.

16 Q. Would it --

17 A. It went out -- it went on throughout
18 from -- from fall of '07 right through -- right
19 through June and prior to the -- the actual
20 rejection of the Whitney offer and filing
21 bankruptcy.

22 Q. Well, all I -- all I can show you is the
23 evidence. I had the courtesy of showing you
24 specific evidence and specific proposed

1 transactions.

2 A. Well, if you want to confine it just to
3 that, then I don't disagree with you.

4 Q. I would like you to identify for me a
5 specific email, communication, document that
6 supports your statement that the Special
7 Transaction Committee considered any other
8 proposal, any other general structure for a
9 consensual deal of the type similar to what
10 Candlewood is proposing outside of the context of
11 the four proposals made that are reflected on
12 Exhibit 801.

13 A. If one confines their activity around
14 just these proposals, then you are completely
15 correct.

16 Q. Were there any proposals made other than
17 those by Candlewood of a similar nature?

18 A. If you confine just there being an
19 instantiated proposal, then your answer's
20 correct. If you look at what was going on in
21 terms of all the back and forth about trying to
22 get consensual deals --

23 Q. Let's stop there. Back and forth
24 between who?

1 A. Well, between Mr. Morgan, the -- and
2 Nancy Blair of the Special Transaction Committee.
3 There were -- there were -- there's a lot. It was
4 just the undertow on the entire period.

5 Q. And did you do any analysis or see any
6 evidence that indicated to you the amount of time
7 that Ms. Blair or any member of the Special
8 Transaction Committee devoted to consideration of
9 conceptually the type of deals that Candlewood had
10 been proposing at the time, whether it was by
11 letter from Mr. Morgan or otherwise?

12 A. If you equate the whole thing to a
13 matter of quantified time, I don't have -- I don't
14 have specific things to address in terms of
15 quantifiable time.

16 Q. Do you know how frequently the Special
17 Transaction Committee met between -- let's call it
18 the summer of 2007 and the day that the ESOP
19 trustee removed that board?

20 A. I don't.

21 Q. Okay.

22 A. I know that there was a lot of back and
23 forth in emails and a lot --

24 Q. Did you analyze any minutes of the

1 Special Transaction Committee in preparing your
2 report or formulating your opinion?

3 A. I read the responses, and I read some of
4 the reports in the meetings.

5 Q. Responses meaning you've read -- how
6 many -- you've read communications to the
7 committee and the committee's responses?

8 A. Communications to the committee,
9 committee responses, communications between the
10 committee and Mr. Morgan.

11 Q. Let's stop there. How many
12 communications between Mr. Morgan and the
13 committee --

14 A. Oh.

15 Q. -- did you look at?

16 A. Several.

17 Q. Several's not good enough. How many?

18 A. Well, several's the best I can do. More
19 than two.

20 Q. You've looked at them over the last 60
21 days and you don't remember any more than several?

22 A. Well, I can -- I can give you the
23 content of some of them if you'd like.

24 Q. No, because I'm more interested in terms

1 of right now the amount of time -- you seem to
2 think the committee spent an inordinate amount of
3 time dealing with Mr. Morgan, and I'm trying to
4 figure out what is the factual basis for that
5 comment by asking you to identify for me evidence
6 that supports your general statement.

7 A. I'll just repeat what I've said, that
8 the -- the concepts of consensual deal, in
9 addition to the actual proposals -- to come up
10 with them was an undercurrent throughout that
11 whole period and the subject of many, many emails,
12 many, many Special Transaction Committee
13 discussions, discussions with the investment
14 bankers, discussions with Mr. Morgan and the
15 Special Transaction Committee. It's -- it's
16 throughout the record.

17 Q. And do you have the same sort of
18 communications that you've seen with regard to the
19 Special Transaction Committee considering 363-type
20 sales?

21 A. Not nearly as much.

22 Q. And can you give me the relative --
23 that's the problem I'm having with you, sir. You
24 speak in generalities and you use adjectives. But

1 the rule as I showed you early on requires you in
2 your report, actually, to identify what you're
3 relying upon, and you failed to do that.

4 And now I'm coming here today and in
5 good faith trying to discover what you're relying
6 upon, and you're unable to identify for me the
7 precise nature of these communications, who wrote
8 them, and, in particular, how many there were, and
9 how much time the committee spent considering LOIs
10 versus considering a consensual deal.

11 You're unable to tell me with any level
12 of precision the amount of time the committee
13 spent considering consensual deals or considering
14 a 363 deal; is that right?

15 A. With any precision, no, I can't.

16 Q. Thank you.

17 Sir, in terms of the testimony that the
18 committee spent more time dealing or considering
19 consensual deal structures versus 363, how do you
20 -- how are you able to articulate how much time
21 was spent doing one versus how much time was spent
22 doing the other, other than just a general
23 statement that you believe they spent more time
24 doing one than the other?

1 A. Just -- just from the level of traffic
2 on the discussion.

3 Q. Did you count up the number of emails
4 relating to each issue?

5 A. I certainly did not.

6 Q. Okay. Is there any way you can help me
7 quantify that and substantiate your --

8 A. Sure.

9 Q. -- speculation?

10 A. We could certainly go back into all the
11 exhibits and identify every email and every --
12 every -- every correspondence that there was in
13 respect to the consensual deal, and you can
14 certainly identify those.

15 Q. And you believe that's a valid measure
16 of the time the committee was spending on looking
17 at consensual deals versus 363, just counting up
18 the various correspondence?

19 A. Well, you seem to think that's the way
20 to do it.

21 Q. I don't. I'm asking you how you did it
22 without having been in the room.

23 A. What I -- what I said, and to
24 recharacterize what I said again, is that the

1 consensual deal was an undercurrent throughout
2 that whole period. There was a lot of discussion
3 about it, a lot of -- a lot of requests, a lot of
4 requests from Mr. Morgan to the Special
5 Transaction Committee.

6 Q. When you say a lot, how many?

7 A. Numerous.

8 Q. How many does numerous mean?

9 A. More than three. More than five.

10 Q. More than ten?

11 A. Don't know. I'd have to go back and
12 count. We can certainly do that.

13 Q. Have you ever done that count?

14 A. No, I've not.

15 Q. Okay. When you were looking at this
16 issue, is it true that you only looked at
17 documents that the Taft law firm gave you?

18 A. Yes.

19 Q. Okay. And is there room for the
20 possibility that Taft didn't give you all of the
21 email traffic between committee members and
22 between committee members and Houlihan discussing
23 potential 363 deals?

24 A. Are you asking me is that a possibility?

1 Q. Yes, sir, that's what I'm asking you.

2 A. Yes, that's a possibility.

3 Q. You don't know one way or the other?

4 A. If I say it's a possibility, I don't
5 know.

6 Q. Your next opinion was that the Special
7 Transaction Committee, but also the board of
8 directors in general through Houlihan Lokey and
9 McDermott, Will & Emery, got good advice but did
10 not heed the advice in 2007 and 2008. Do you
11 remember that opinion?

12 A. Yes.

13 Q. Okay. Can you identify for me each and
14 every piece of advice that Houlihan Lokey gave the
15 board and the Special Transaction Committee in
16 2007 and 2008 that they failed to follow?

17 A. Failed to follow is a question of at
18 what time and how much time was spent before they
19 followed one thing or another.

20 Q. Well, I agree, so I hope your answer
21 takes that into account.

22 A. I try to take that into account.
23 Although I certainly have no opinion about the
24 additional legal counsel that McDermott, Will &

1 Emery provided, I thought Jim Shein was correct
2 about what the company needed to do in '07 in
3 respect to a -- to a 363 sale in a Chapter 11
4 bankruptcy.

5 I thought that Houlihan's advice,
6 particularly Steve Spencer, throughout that period
7 was button on. I just think their evaluation of
8 the offers Candlewood were making, the evaluation
9 and the management of the -- of what was available
10 in the market were very good advice.

11 Q. Well, you're falling back, once again,
12 into really not answering the question but using
13 your chair there as kind of a soapbox to speak.

14 The question really was, what advice,
15 specific advice, did Houlihan Lokey give -- I
16 think you said the Special Transaction Committee,
17 but all the board of directors in general, that
18 they did not follow or did not heed, I think was
19 your word, H-E-E-D?

20 A. Well, yeah, let me -- fine. What I
21 believe happened was Houlihan advised that this
22 was going to have to go through a 363 because
23 there was just too much complex liability that --
24 and the valuations were falling off anyway.

1 Q. Excellent. And ultimately, the Special
2 Transaction Committee followed that advice and
3 pursued a 363 deal with J.H. Whitney, correct?

4 A. And may have done it well earlier had it
5 not been for the drag on the time from the
6 consensual deal.

7 Q. Actually, you're right. They might have
8 done that back in March when Whitney's proposal
9 was \$10 million less than it ultimately was in
10 May; isn't that right?

11 A. Or potentially --

12 Q. Am I right or wrong?

13 A. Or potentially with Sun Capital when
14 that offer would have been somewhat higher.

15 Q. Well, Sun Capital was not a 363 deal --

16 A. No.

17 Q. -- was it?

18 A. They could have -- they could -- no, it
19 wasn't. You're correct.

20 Q. I know I'm correct, and now you're
21 mixing apples and oranges because you're talking
22 about Mr. Spencer and you're talking about 363.
23 Okay?

24 A. Mm-hmm.

1 Q. Sun was part of the first phase.

2 A. I -- I -- I --

3 Q. Do you agree?

4 A. I do agree.

5 Q. Okay.

6 A. It was a mistake on my part. The offer
7 could have been there. The other thing, too,
8 is --

9 Q. Well, let's --

10 A. Are you going to let me finish?

11 Q. There was an earlier 363 deal for \$44
12 million that Mr. Spencer, Mr. Lenoir, Fifth Third
13 Bank, National City Bank, and the third bank all
14 felt was not as good as the GSC deal. Do you
15 recall that?

16 A. I recall that.

17 Q. Was there any other 363 deal that you've
18 seen in the record that was better than Whitney's
19 \$44 million deal proposed in March of 2008?

20 A. No, not that I know of.

21 Q. There is one in the record, and that's
22 Whitney's \$54 million deal three months later,
23 correct?

24 A. That's right, in May.

1 Q. And the Special Transaction Committee
2 chose to pursue that, correct?

3 A. It did.

4 Q. And actually, Ms. Moran supported the
5 committee's decision to pursue the 363 deal,
6 didn't she?

7 A. Until she didn't.

8 Q. Excuse me?

9 A. Until she didn't. Yeah, she -- there's
10 a -- well, no, time out. There's -- there's a --
11 there's an email saying she did. There's a draft
12 release -- press release saying she did.

13 Q. Okay. Do you have any reason to believe
14 that wasn't an accurate representation of
15 Ms. Moran's viewpoint at the time she made those
16 representations?

17 A. I have no reason to believe it wasn't --

18 Q. Okay.

19 A. -- except --

20 Q. Thank you.

21 A. -- except the -- Lenoir and the sub
22 trust came in and voted off the board and killed
23 off the transaction and subsequently made the two,
24 Mr. and Mrs. -- Ms. Moran and Mr. Morgan as board

1 members with one other.

2 Q. And those board members understood that
3 any transaction with Whitney or a bankruptcy sale
4 would not win the approval of the sub trustee,
5 correct?

6 A. Certainly that would have been an
7 indication at that point.

8 Q. Sir, let's kind of be honest with each
9 other. Okay? You know from this record that
10 Mr. Lenoir was not going to approve a transaction
11 that involved the sale of the company as a going
12 concern through a 363 sale; isn't that right?

13 A. Is it right, except he did that because
14 he believed somehow there was a consensual deal
15 that was this undercurrent that somehow the value
16 would be better, which was nonsense.

17 Q. Well, you might believe that, and
18 Mr. Lenoir's not here. Did you read his
19 deposition testimony?

20 A. I did.

21 Q. Okay. Whatever you want to believe of
22 Mr. Lenoir's financial or business acumen, the
23 point is he controlled 85 percent of the shares at
24 the time --

1 A. Agreed.

2 Q. -- did he not?

3 A. Yes, he did.

4 Q. And any responsible board would have to
5 take into account its 85 percent shareholder's
6 views, wouldn't they?

7 A. They had no choice.

8 Q. Thank you. Your next opinion and last
9 one that you gave was the J.H. Whitney offer was
10 the best offer for the company and its -- can you
11 read my handwriting? -- and its continuation.

12 A. Yes.

13 Q. Your opinion was the J.H. Whitney offer
14 was the best offer for the company and its
15 continuation?

16 A. Yes.

17 Q. Okay. I don't think I have many
18 questions about that. In fact, I have none. But
19 that's your eighth opinion.

20 A. You're keeping count.

21 Q. I did keep count. It was important for
22 me to keep count. It was supposed to be in your
23 report, but they weren't. But I appreciate the
24 fact you articulated them here on the record.

1 MS. ANDREW: Objection.

2 MR. SCHEIER: Let's take a short break.

3 (A brief break was taken.)

4 Q. (By Mr. Scheier) Welcome back from the
5 break, sir.

6 A. Thank you.

7 Q. We talked a little bit about
8 Mr. Lenoir's decision to exercise his control over
9 85 percent of the shares to remove the board from
10 what the evidence indicates was an intent to
11 frustrate the Whitney transaction, correct?

12 A. Yes.

13 Q. And you had some criticism of
14 Mr. Lenoir's business acumen or decision in that
15 regard, I believe, correct?

16 A. That's correct.

17 Q. Did you take a look to see at all how
18 Mr. Lenoir's constituents -- namely, ESOP
19 participants and ESOP note holders -- fared as a
20 result of Mr. Lenoir hanging in there and agreeing
21 to eventually a bankruptcy in November 2008?

22 A. Through the subsequent bankruptcy?

23 Q. Yes, sir.

24 A. No, I haven't.

1 Q. I'll represent to you that by rejecting
2 the Whitney deal where Mr. Lenoir's constituency
3 would have gotten zero -- both ESOP note holders
4 and equity -- by holding out and agreeing
5 ultimately to a reorganization, Mr. Lenoir's
6 constituents, both the ESOP note holders and the
7 ESOP participants, received a 15 percent interest
8 in the common stock trust. Were you aware of
9 that?

10 A. I am.

11 Q. You'd agree that that potentially is
12 better than getting nothing, assuming that
13 Ms. Andrew (sic) and others can add value to that
14 particular asset?

15 A. I don't want to agree to the -- to your
16 comment.

17 Q. Well, I know it's tough, but --

18 A. Well, no, it's not tough. It's just
19 you're making a statement, and you're asking me to
20 -- let's break it down into a couple questions.

21 MS. ANDREW: And I'm not sure, Mike, I
22 thought your first question said they received
23 percentage in the stock trust?

24 MR. SCHEIER: I believe they did.

1 MS. ANDREW: And then you asked about
2 adding value through Mr. Miller and myself.

3 MR. SCHEIER: No, I strike that. That
4 was not right.

5 A. Okay. Start again.

6 Q. (By Mr. Scheier) Sure. Are you aware
7 that Mr. Lenoir's constituents received a 15
8 percent interest in the common stock trust that
9 resulted from the ultimate reorganization of The
10 Antioch Company?

11 A. I read the petition going into '08, so I
12 understood it, so...

13 Q. And would you then agree that they
14 received -- "they" being Mr. Lenoir's
15 constituents -- value that they would not have
16 gotten had Mr. Lenoir permitted the Special
17 Transaction Committee to pursue a 363 sale with
18 J.H. Whitney?

19 A. Yeah. My understanding of the Whitney
20 deal was that they weren't terribly interested in
21 having additional equity participation outside of
22 their own position, so...

23 Q. So is the answer that Mr. Lenoir's
24 decision to remove the board and veto the Whitney

1 deal actually benefited his constituents?

2 A. No, that's not the answer.

3 Q. Okay.

4 A. The answer -- well, let me finish. The
5 answer is that you could certainly impute value in
6 the same way that the Morgans imputed value for
7 their sub debt and the warrants that just simply
8 wasn't there. And as it turned out, it wasn't
9 there.

10 Q. Although he got them some value through
11 the bankruptcy, that being a 15 percent interest
12 in the --

13 A. That's --

14 Q. -- common stock trust?

15 A. That's just -- that's an imputable
16 potential out there piece of number. It's a piece
17 of sub equity that may or may never have come into
18 anything.

19 Q. And you would agree that that's better
20 than having absolutely no chance of anything?

21 A. When you're somewhere between an
22 asymptote to zero and zero, it's pretty hard to
23 say that that's a better -- a better deal.

24 Q. Well, is it better to have a chance at

1 making some recovery than having no chance of
2 recovery at all?

3 A. I think it's better to have a chance
4 with a -- with a sponsor partner with substantial
5 capital and ability to -- to -- to move the
6 company out of bankruptcy.

7 Q. Well, unfortunately, sir, that wasn't an
8 option available to Ms. Lenoir or anyone else,
9 so --

10 A. No. Let's --

11 Q. -- let's look at -- let's look at
12 something that is seemingly difficult for you to
13 do, and that's look at this record.

14 A. You're asking --

15 Q. On this record --

16 A. On this record.

17 Q. -- is it fair to say that it's better
18 for Mr. Lenoir's constituencies to have an
19 opportunity to monetize a 15 percent share in a
20 common stock trust than agree to a transaction
21 where they're guaranteed to get zero?

22 A. I'll go back to what I said before, if I
23 might. The extent to which that had any value at
24 all is more than hypothetical. And I don't think

1 it had any value, and it turned out it didn't.

2 Q. What didn't?

3 A. The 15 percent.

4 Q. It might still.

5 A. You're hopeful.

6 Q. But you still for some reason insist on
7 avoiding an answer to the question, and that is,
8 aren't Mr. Lenoir's constituents better off with a
9 contingent recovery than a guaranteed no recovery?

10 A. If you're saying to me that if they had
11 any kind of probability of getting that, would
12 that be better than having no probability of
13 getting it, and if you -- if you accept that --
14 that characterization -- if we accept that
15 probability is a value given the total
16 circumstances of the company in bankruptcy, then I
17 would concede your point, but no other way that I
18 would concede your point.

19 Q. Let's look at the -- get back to your --
20 now that we've gone through your opinions, let's
21 get back to your balance sheet that you pointed
22 out on page 7.

23 A. Okay.

24 Q. Let me know when you're there.

1 A. I'm there.

2 Q. Okay. Do you believe that Antioch
3 Company's equity really was negative \$78,186,000
4 after the transaction?

5 A. I believe that the book equity was
6 negative \$78 million after the transaction.

7 Q. What about fair market value?

8 A. I don't know what the fair market value
9 was after the transaction because you'd have to
10 look at the impact of the transaction on the -- on
11 the value of the company, which I don't think
12 anybody did.

13 Q. You certainly didn't do it for purposes
14 of preparing your report?

15 A. I certainly looked at it from the point
16 of view of what happened and what the various
17 valuations were up to that point.

18 Q. Do you believe that looking at book
19 value, the equity of The Antioch Company was a
20 negative --

21 A. Yes.

22 Q. -- after the 2003 transaction?

23 A. Yes.

24 Q. Taking book value into account? That's

1 taking book value into account, correct?

2 A. The book value was negative in the
3 company at the -- at the close of 2012.

4 Q. And --

5 A. 2003, I'm sorry.

6 Q. Okay. Do you believe that shareholder
7 equity was less than zero if you would take fair
8 market value into account?

9 A. At that point, sure.

10 Q. Can you state your answer?

11 A. If one was able to impute fair market
12 value, which I don't think anybody was able to do
13 at this point given everything that was going on,
14 then you might be able to make the argument in a
15 valuation that the fair market value of the equity
16 was greater than zero.

17 Q. Okay. Could there ever be a possibility
18 where, taking fair market value into account,
19 equity is less than zero?

20 A. Of course there's the possibility, but
21 are we talking about this deal or some other deal?

22 Q. I'm talking about just the possibility.

23 A. Seems hard to believe.

24 Q. Okay.

1 A. You have positive... It wouldn't be the
2 market valuation. You'd have -- you'd have
3 positive fair market value.

4 Q. And with regard to fair market value, I
5 guess you confused me a little bit only because
6 it's not my area, but don't you look at the assets
7 of a company and determine what it could be sold
8 for, including desks and chairs, including
9 goodwill, including buildings, including basically
10 all of the physical assets that the company owns,
11 plus goodwill?

12 A. Let me answer your question. If you
13 liquidated the company on the basis of its book
14 value of assets and liabilities, you'd have a
15 negative \$78 million of value at the end of the
16 day.

17 Q. Okay. Are you going to answer my
18 question or --

19 A. That is. You asked me what the
20 liquidation value would be --

21 Q. I'm not asking you the liquidation
22 value; I'm asking you sale of fair market -- sale
23 of assets at fair market value.

24 A. Oh, okay. I don't -- I don't believe

1 you asked me that, but, yeah, if you sold the
2 company at fair market value at the time this
3 balance sheet closed, there would be -- there
4 should be positive value.

5 Q. Right.

6 A. But in terms of the assets of the
7 company and in terms of the liabilities of the
8 company, that would be negative.

9 Q. At book value -- taking the liabilities
10 at book value?

11 A. How else would you take them?

12 Q. At fair market value.

13 A. Liabilities are also at book value.

14 Q. I'm talking about assets, sir.

15 A. Well --

16 Q. If I looked at the assets of the company
17 at fair market value at the close of the 2003
18 transaction --

19 A. I think you're confusing between book
20 value and fair market value. The assets of the
21 company -- there may be some step-up in the basis
22 of the -- of the fixed assets under a 338 elec- --
23 H election or something like that. But to the
24 extent these are fairly recorded, it's not

1 unreasonable to conclude that you'd have
2 \$78 million of negative book of value at the end
3 of the day on a book value basis.

4 Q. You had -- I understand what it means to
5 value assets at fair market value, and I'm asking
6 -- and you had told me that you don't believe it
7 was possible to value Antioch's assets at fair
8 market value post-transaction. And my question
9 was, why?

10 A. No, I didn't say that.

11 Q. Okay.

12 A. And if I did, you -- if I did, I
13 misunderstood a question and you misunderstood
14 what I said. What I'm saying is -- the only thing
15 I'm saying is the -- it had negative shareholder
16 equity at the closing, period. That's what it
17 is.

18 If you liquidated the assets apart from
19 a potential step-up in the basis of the -- of the
20 fixed asset values and maybe something else that's
21 on there that I don't know about, you might have
22 some difference; but it's hard to believe you
23 would have -- you'd have positive difference on a
24 book value basis. That's book equity.

1 Q. But I want to talk about -- well, I want
2 to talk about fair market value of the assets.

3 A. Well, the only --

4 Q. And you have to tell me if that's just a
5 concept that doesn't exist; in other words, you
6 couldn't value the assets of the company as of
7 December 31 of 2003 at fair market value?

8 A. If we're just looking at what's on the
9 balance sheet and we're not -- we're not -- we're
10 not allocating for any goodwill -- so we're just
11 talking about the balance sheet, is there -- the
12 question you're asking me, is there a possibility
13 that those assets are worth more than what they're
14 recorded for?

15 Q. Correct.

16 A. Okay. And the answer is potentially.

17 Q. Yes.

18 A. You know, you have a piece of real
19 estate on there at the time; you had, you know,
20 desks and chairs, which I kind of doubt that they
21 would be worth much more.

22 Q. We're talking about examples.

23 A. Yeah, but -- but -- you know, and the
24 real estate asset might be worth a little bit

1 more, but any of the current assets and certainly
2 any of the liabilities would be exactly what they
3 are. And, you know, they might have some
4 equipment that they -- you could make an argument
5 that they're worth more than their depreciated
6 value.

7 Q. Did you make any effort to take a look
8 at what the fair market value of the whole basket
9 of Antioch's assets were as of December 31, 2003?

10 A. Really had no reason to. Just was
11 looking at what -- where the balance sheet was.

12 Q. Did you take a look at Houlihan's
13 write-up of the assets, the fair market value, for
14 purposes of providing a view that the transaction
15 would not render the company insolvent when assets
16 are measured at fair market value?

17 A. Is this the transaction analysis that
18 they did in the 2003 transaction?

19 Q. I don't know what you're referring to.
20 What I'm talking about is a document that the Taft
21 law firm apparently didn't give you, and that is
22 the board of directors December 4, 2003, meeting
23 minutes where the board considered Houlihan's
24 evaluation of the company's fair market value of

1 its assets minus its liabilities post-transaction
2 would yield a positive.

3 A. I know about that meeting, and I know
4 about the general content of the meeting.

5 Q. Well, actually, tell me about the
6 general content of the meeting.

7 A. The general content of the meeting was
8 that there -- it had to do with the ability to
9 make dividend distributions with negative book
10 value.

11 Q. We might be talking about different
12 meetings.

13 A. Could be. But my understanding --

14 Q. Are you talking about the December 4,
15 2003 --

16 A. I'm not exactly sure of the date. I
17 know it was in December, and there --

18 Q. Sir, you can't just --

19 A. Well, you asked me.

20 Q. The rules require you to know facts and
21 to provide me with the facts upon which you base
22 things you have to say in this report, which you
23 don't, but since you haven't, in this room.

24 And you're talking to me about a

1 document you think you kind of thought you saw
2 that had to do with a meeting in 2003. So let me
3 be very specific.

4 I'm asking you what your understanding
5 of the general topics were that were discussed at
6 the December 4th, 2003, meeting of The Antioch
7 Company's board of directors.

8 MS. ANDREW: Before you answer, I just
9 want to state for the record an objection as to
10 your characterization and your question as to what
11 his obligations are. He is not -- he is not
12 obligated to memorize millions of pages of
13 documents and their dates to spit them out for
14 you. You may go ahead.

15 Q. That's what would be the great benefit
16 of highlighting in the report the factual sources
17 for comments made. Go ahead.

18 A. Well, I don't -- I don't comment on that
19 at all in the document.

20 Q. Yes, we know that.

21 A. Well, we don't because I did what -- did
22 not have the document. There was discussion about
23 trying to put goodwill on the books -- that the
24 board was trying to come to a decision to put

1 goodwill on the books. And I understood it in the
2 context of them being able to deliver a dividend
3 given the fact that the company had negative book,
4 and this would be a way of righting that. That's
5 all I know.

6 Q. Take any issue with Houlihan's analysis?

7 A. Well...

8 Q. You haven't seen it, right?

9 A. I haven't seen it, so it's hard to take
10 issue with it, yeah.

11 Q. Is your only knowledge of that meeting
12 something that the Taft lawyers told you?

13 A. Yes.

14 Q. At the close of the 2003 transaction,
15 was The Antioch Company's enterprise value greater
16 than the debt after the transaction?

17 A. I would think so.

18 Q. I'd like you to take a look, please, at
19 page 9 of your report.

20 A. Okay.

21 Q. And I'm looking at the very top of that
22 page where you write "It is unclear from the
23 records available to Silverstone whether the
24 Morgans and their advisors established the \$850

1 share price while taking into account the state of
2 post-closing transaction balance sheet, which paid
3 out company cash and took on significant new
4 levels of senior and subordinated debt," period.

5 Did I read that correctly?

6 A. I believe you have.

7 Q. A couple of questions. Who are the
8 Morgans?

9 A. I was referring to Mr. Lee Morgan, I'm
10 referring to Asha Morgan, and -- and I believe his
11 wife was also in that. And I was using that as --
12 you know, as the -- as the impetus for these
13 decisions.

14 Q. What specific evidence are you referring
15 to -- by the way, what is Lee's wife's name?

16 A. I just saw it yesterday. I just don't
17 know offhand. I don't want to guess.

18 Q. Okay. Where did you see his wife's name
19 yesterday?

20 A. In one of the documents I was going back
21 through.

22 Q. What document, sir?

23 A. Oh, we're going through this again.
24 I've looked at thousands of documents. I don't

1 know exactly which one I looked at.

2 Q. What document did you look at that gave
3 you any indication that Vicki Morgan had anything
4 to do with establishing any term of the 2003
5 transaction, sir?

6 A. Let's go back to what you asked me.

7 Q. No. Let me ask you that question.

8 A. No. Let me finish.

9 Q. No. Let me -- you answer my question
10 now. What document did you look at that
11 establishes that Lee Morgan's wife, Vicki, had
12 anything to do, any input whatsoever, with regard
13 to any of the terms that were ultimately
14 established and closed upon in the 2003
15 transaction?

16 A. First of all, I didn't say that. Let's
17 be clear.

18 Q. When I asked you who the Morgans were in
19 this sentence, sir, you said it was Lee Morgan,
20 his wife, and their daughter, Asha.

21 A. No. That's not exactly what I said. I
22 said it was Lee Morgan, it was Asha Morgan, and I
23 believe his wife was involved at some level at
24 least as one of the people in this...

1 Q. Do you know of any evidence that Vicki
2 Morgan had anything to do at any time with
3 establishing, discussing, evaluating, analyzing
4 any aspect of the 2003 transaction?

5 A. I -- look, I...

6 Q. The answer's yes or no.

7 A. The answer's no.

8 Q. Okay. Thank you.

9 Do you have any evidence whatsoever that
10 you can point me to that Asha Moran had anything
11 to do with negotiating, evaluating, analyzing, and
12 establishing any material term of the 2003
13 transaction outside of her role as a board member
14 like all the other board members?

15 A. I'm not clear that I'm -- clear that I'm
16 stipulating anything different than that.

17 Q. Is the answer no --

18 A. Well...

19 Q. -- that you haven't seen any such
20 evidence?

21 A. She was part of the management group.
22 She was one of the shareholders.

23 Q. I understand what her different hats
24 were.

1 A. Are you going to badger me, or are you
2 going to let me finish?

3 Q. No, I'm not going to let you finish
4 until you answer my question.

5 A. I'm trying to.

6 Q. You need to listen to the question and
7 answer it and not start -- not start dancing
8 around here with terms and generalities. I'm
9 asking have you seen any evidence that Asha Moran
10 analyzed, established, negotiated, or chose any
11 material term of the 2003 transaction?

12 MS. ANDREW: Other than all her roles?

13 A. Other than all her roles as a director
14 of the board of the company and a major
15 shareholder.

16 Q. She did nothing different than any other
17 director vis-a-vis the 2003 transaction; is that
18 right? Is that your understanding?

19 A. The impetus of the -- of the comment
20 here was that this was largely driven by at least
21 Lee Morgan and -- and I'm assuming also because
22 Asha Morgan was also a major shareholder and was
23 part of the discussion as to what to do to fix
24 whatever they were intending to fix.

1 Q. What document did you look at that
2 indicated Asha Moran was part of that discussion?

3 A. I don't recall offhand except that she
4 was part of the general transaction, part of the
5 board of the directors, an officer of the company,
6 and a major shareholder. That's all.

7 Q. So you can't point to me any specific
8 aspect of the 2003 transaction that Asha Moran
9 established?

10 A. Well, I can't.

11 Q. You cannot? You can or cannot?

12 A. I know she was involved as one of the
13 parties, a large shareholder, and an officer of
14 the company, and a director of the board.

15 Q. And what's your understanding of her
16 involvement? I need specifics of what evidence
17 you saw that she was involved.

18 A. Well, it's hard to believe that she
19 wouldn't have been involved.

20 Q. Well --

21 A. Well, no.

22 Q. No, it's hard to believe in the man in
23 the moon also, but there's some people that do.

24 A. Yeah, I suppose so.

1 Q. Right. So the question is, have you
2 seen any evidence that Asha Moran --

3 A. It -- it -- it doesn't --

4 Q. -- established any aspect of the 2003
5 transaction including the \$850 share price?

6 A. Nothing's negated by what I said. It
7 just -- it says the Morgans and their advisors
8 established the \$850 share price.

9 Q. Yeah. I'm asking you, who are the
10 Morgans?

11 A. Well, principally Lee Morgan, I would
12 assume.

13 Q. Was there any other member of the Morgan
14 family that you're aware of that had any role in
15 establishing the \$850 share price?

16 A. I said what I said.

17 Q. Well, answer my question, please.

18 A. Um...

19 Q. The answer's no as I heard it.

20 A. So then take the no.

21 Q. Is the answer no?

22 A. I have no evidence that they were, apart
23 from their role as directors of the board,
24 shareholders, and officers of the company.

1 Q. And who are "they"?

2 A. In particular, Asha -- Asha Moran.

3 Q. Any other member of the Morgan family
4 that you know is a member of the board or
5 shareholder of the company?

6 A. Not as far as I know.

7 Q. Okay. And what evidence do you have
8 that Asha Moran played any role whatsoever in
9 establishing the \$850 share price over and above
10 what any other -- the role that any other director
11 had?

12 A. That's fair enough, right? She was on
13 the board of directors, and she was an officer of
14 the company, and she was a major shareholder.

15 Q. What did Lee Morgan do other than --
16 different than any other director of the company,
17 different than any other manager of the company?

18 A. Oh, come on. The entire impetus for
19 this came from that, from Mr. Morgan. This wasn't
20 just generated ex nihilo at the board saying, Hey,
21 look, let's go off and let's do a tender offer and
22 recapitalize the company.

23 Q. I don't know if the jury knows what ex
24 nihilo means.

1 A. It means out of nothing.

2 Q. Okay.

3 A. It's Latin. Sorry.

4 Q. Were you given any evidence by the Taft
5 lawyers as to whose idea this transaction was?

6 A. The transaction, from what I understand,
7 was brought to Mr. Morgan through consultation
8 with Deloitte looking at their wealth management
9 issues. That's what I understood.

10 Q. Okay. Well, then that's the problem
11 with not looking at evidence, sir. You just get
12 it wrong. And on a record like this, you make
13 comments that are offensive and wrong.

14 A. Whatever. So what was it?

15 Q. Did you learn any facts regarding the
16 2003 transaction from any source other than the
17 lawyers from Taft, Stettinius & Hollister?

18 A. Yeah, from the documents that I -- that
19 had -- were made available to me.

20 Q. Sir, there were two documents from the
21 2003 time frame that you had.

22 A. Yeah, there was also -- there was --
23 there was many summaries of a variety of what
24 happened, what the values were, how they were --

1 Q. Which of those documents identified Lee
2 Morgan as originating the 2003 transaction and the
3 concept for it?

4 A. Well, the concept of it, as I've said,
5 from what I've understood came from consultation
6 with Deloitte and with the impetus from
7 Mr. Morgan. The board certainly didn't come up
8 with it out of -- out of thin air.

9 Q. Anyone from Taft tell you the idea came
10 from Helen Morrison?

11 A. Well, if she was from Deloitte, that may
12 well...

13 Q. Anyone from Taft tell you that Lee
14 Morgan never knew Helen Morrison before he met her
15 for the first time at a meeting in January of
16 2003?

17 A. If that's -- any of it relevant, then,
18 no, I've not heard that.

19 Q. Would it make a difference to you that
20 the entire concept of a 100 percent ESOP
21 transaction that included a tender offer of 90 sub
22 shares originated solely with and was brought to
23 the board by not Lee Morgan but Helen Morrison?
24 If that were the fact, would that change your

1 opinion in any way?

2 A. No, because I don't believe that's what
3 happened.

4 Q. Okay. Can you identify any document you
5 looked at that discussed the origin of the 2003
6 transaction and the deal structure?

7 A. I've already indicated what I knew.

8 Q. It was just brought to my attention that
9 although you testified you looked at thousands of
10 documents, my understanding is that you produced
11 only 550 documents to us. So is thousands of
12 documents just an exaggeration?

13 A. Well, there were pages and pages of
14 testimony, there were exhibits. Whatever was in
15 there is what I've read, so if it's an
16 exaggeration --

17 Q. Did you read --

18 A. -- it's not my intention.

19 Q. Did you read any deposition testimony
20 that established that Mr. Morgan originated the
21 idea for a tender offer and a 100 percent ESOP
22 transaction?

23 A. I'm not sure that I've ever said that he
24 originated the idea. You're the one saying that.

1 Q. No. You keep telling me --

2 A. No. I said it's unclear from the
3 records available whether the Morgan Trust -- the
4 Silverstone -- whether the Morgans and their
5 advisors established the share price while taking
6 into account the state of the post-transaction
7 balance sheet.

8 Q. Well, I just don't even know where
9 you're getting -- first of all, you use the phrase
10 "the Morgans," and we've established that really
11 means nobody other than Lee Morgan, and then you
12 say that Mr. Morgan with his advisors. Who are
13 his advisors?

14 A. Well, I thought Deloitte was his
15 advisors.

16 Q. Did you ever look at Deloitte's
17 engagement letter with the company?

18 A. No, I've not seen their engagement
19 letter.

20 Q. Okay. Did you ever have an
21 understanding that Deloitte's wealth management
22 group, a completely different set of folks, were
23 helping Mr. Morgan with his estate planning at a
24 different period in time?

1 MS. ANDREW: Objection.

2 Mischaracterizes the facts.

3 MR. SCHEIER: Well, your witness doesn't
4 know the facts, Marsha, so I'm trying to educate
5 him.

6 MS. ANDREW: Well, and you're trying to
7 give him one set of facts that's incorrect with
8 the record --

9 MR. SCHEIER: I'll withdraw the
10 question.

11 Q. (By Mr. Scheier) What evidence have you
12 seen in this record by way of deposition testimony
13 or a document created by anyone other than the
14 lawyers at Taft that support your contention that
15 Mr. Morgan established the \$850 share price?

16 A. It doesn't say that.

17 Q. (Reading) It is unclear from the
18 records --

19 A. Whether the Morgans --

20 Q. -- whether the Morgans and their
21 advisors established the \$850 share price while
22 taking into account the state of post-closing
23 transaction balance sheet, so on and so forth.

24 Are you telling me that you do not

1 believe -- and this will be good to hear -- that
2 Mr. Morgan established the \$850 strike price for
3 the transaction?

4 A. I -- let me go on what I -- what I
5 believe. I don't think Morgan -- Mr. Morgan was
6 someone who would be able to do that financially
7 speaking, analytically speaking, but that with
8 the -- with the aid of his advisors, came about to
9 that number. I'm not saying he sat down there and
10 did a valuation of the business. That's
11 ludicrous.

12 Q. Well, what document do you have to
13 indicate that Mr. Morgan personally employed
14 advisors or engaged advisors to come up with an
15 \$850 share price?

16 A. Well, I don't think anybody personally
17 employed someone to come up with an \$850 share
18 price.

19 Q. What evidence in the record can you
20 point to that Mr. Morgan individually engaged
21 advisors to give him advice personally in regard
22 to the 2003 transaction?

23 A. I don't have any direct evidence except
24 that the -- I still contend that the impetus to do

1 this was driven out of his wealth -- his wealth
2 planning efforts and got to the board as looking
3 at a transaction.

4 Q. And who testified that way, that you
5 believe -- you believe that from what testimony in
6 this record?

7 A. Well, certainly none of the defendants,
8 because nobody would say that's what -- exactly
9 what happened.

10 Q. Did you read any third-party testimony,
11 sir, that would -- from where you derive that
12 information?

13 A. Well, I recall a statement by Mr. Morgan
14 explaining to somebody that he screwed up this
15 whole thing. So, I mean, I -- it's -- you know,
16 it's just -- you can't -- I just can't in my mind
17 take him out of the line of responsibility for
18 what happened here. You may want to, but I don't.

19 Q. No. To tell you the truth, do you know
20 what I want to do? I want to establish the facts,
21 and that's what I spent the last three years
22 doing. So what I'm asking you is to help me and
23 point to any evidence in the record that
24 Mr. Morgan engaged any advisor, financial or

1 otherwise, to advise him in respect to the 2003
2 transaction.

3 A. I told you what I -- what I -- you know,
4 I've not seen the Deloitte documents, so I don't
5 know.

6 Q. Have you seen any evidence in this
7 record, be it sworn testimony or a document,
8 indicating that Mr. Morgan had a personal
9 financial advisor advising him in regard to the
10 2003 transaction?

11 A. No, I've not seen any document.

12 Q. Have you seen any document or viewed any
13 testimony supporting your contention that
14 Mr. Morgan wanted to enter into the 2003
15 transaction as part of his personal financial
16 wealth planning or estate planning?

17 A. That was a -- that conclusion was drawn
18 from my conversations with -- with Taft counsel
19 and looking at the documents.

20 Q. Did you say with Taft counsel?

21 A. Yes, we were -- as we were talking about
22 the transaction.

23 Q. And what documents are you referring to?

24 A. I'm not referring to documents.

1 Q. Okay. Thank you.

2 All right. So next is this portion of
3 your statement that -- something about you weren't
4 sure if whoever it was that came up with the \$850
5 share price took into account the state of
6 post-closing transaction balance sheet which paid
7 out company cash and took on significant levels of
8 senior and subordinated debt. Do I understand
9 that right? That's what you wrote?

10 A. Yes.

11 Q. Are you saying there -- and I apologize
12 if I don't understand this -- that the transaction
13 price should have taken into account the state of
14 post -- the state of the post-closing transaction
15 balance sheet?

16 A. What I'm stating, if you read through
17 the document, is that I find it hard to believe
18 that it didn't. It would be improbable if it
19 didn't. If it did, it created minimally a
20 valuation of just under 600 million. If you add
21 the cash back and you reconcile the purchase price
22 of the warrants, it's probably around \$600
23 million. That's all I'm saying.

24 Q. Well, I apologize for being a little

1 dense on this point. You might think I'm dense on
2 most points. But what I'm wondering is whether
3 you believe that in establishing and negotiating a
4 transaction price, the borrowing that the company
5 undertook as part of the transaction and the post-
6 closing transaction balance sheet should have been
7 taken into account?

8 A. Absolutely.

9 Q. Okay. Do you believe in general, sir,
10 that equity value is calculated as enterprise
11 value less net debt?

12 A. Less funded debt and any deficiencies
13 and working capital and things like that.

14 Q. Is it fair to say net debt is basically
15 debtless cash?

16 A. No. I mean, it -- if there's -- it
17 depends on the working capital. I mean, the cash
18 might be -- you know, current assets might be
19 neutral and you need the cash.

20 Q. Well, then, I guess based on your --
21 what you just testified, based on that premise, in
22 a stock redemption funded a hundred percent with
23 new debt, do you believe that the value of the
24 stock should be based on enterprise value

1 pre-transaction debt or post-transaction debt?

2 A. You're asking the wrong kind of
3 question.

4 Q. Okay.

5 A. The right question is enterprise value
6 is established typically -- certainly Prairie's
7 done it and BVI did it as well -- is usually
8 established on a -- on a pre-cash flow balance
9 sheet neutral basis.

10 The difference between that and the
11 funded debt and any deficiencies or surpluses in
12 working capital and any non-operating assets --
13 you know, cash value, life insurance -- would
14 certainly be added back into it, and the net of
15 those things are what you come up with equity.

16 Equity is a result of -- you know, just
17 as in a public company, the cap value of the stock
18 plus the debt is the total capital.

19 Q. And I get that, but I'm speaking
20 specifically in the context of a stock redemption,
21 a company redeeming stock of some or all of its
22 shareholders.

23 In that situation, in coming up with an
24 enterprise value to attach a value to the stock

1 that it's going to pay the shareholders, is it
2 appropriate that the value of the stock should be
3 based on, in any circumstance, post-transaction
4 borrowings or the post-transaction balance sheet?

5 A. The value of the stock should be the
6 difference between enterprise value and funded
7 debt and surplus deficiencies and working capital
8 and any non-operating asset that might have cash
9 value like cash value life insurance.

10 Q. And the debt you just referred to is
11 debt before the deal or after the deal? Before
12 the redemption or after the redemption?

13 A. Enterprise value is enterprise value.
14 Debt is debt. Whatever the debt is at the time is
15 where you'd be. If you close the deal and you had
16 sources and uses and you came out and you'd --
17 you'd net the two of them together and there you'd
18 be.

19 Q. You're not advocating that the debt the
20 company is going to undertake to fund the
21 redemption should be taken into account in
22 establishing --

23 A. You said redemption. Do you mean the
24 tender offer?

1 Q. No. Well, any redemption. The tender
2 offer was a redemption of shares.

3 A. Well, we're just talking about the post-
4 transaction balance sheet and the valuation
5 associated with the tender offer, and that's what
6 we're talking about. I'm not sure what else
7 you're talking about.

8 Q. If you want to use the tender offer, we
9 can. In terms of establishing the price for the
10 tender offer, do you believe that the parties
11 doing so should have taken into account the debt
12 that the company would incur as part of the
13 transaction, or did they only need to take into
14 account the debt as it existed on the books prior
15 to the transaction?

16 A. Well, if you don't take into account the
17 post-transaction capital structure, then the
18 effect would be that you would actually end up
19 with a valuation of the business at a lesser value
20 post-closing than you did at the moment you did
21 the deal. So you would have to have concluded the
22 post-transaction capital structure. I don't know
23 how else you would do it.

24 Q. In valuing the shares pre-transaction

1 for purposes of what you're going to pay for the
2 shares?

3 A. No. You value -- the share -- the share
4 value is a derivative number. It's derivative of
5 the enterprise value less the various parts of the
6 value sheet that would be netted from it or added
7 back to it.

8 Q. You're not contending in this report in
9 any spot, are you, that the debt used to finance
10 an equity buyout is considered as debt already on
11 the books in determining the price the company is
12 going to pay for the shares?

13 A. Please say that again.

14 Q. Sure. Are you contending anywhere in
15 this report that the debt used to finance the
16 redemption, in this case the tender offer, should
17 be considered as debt already incurred -- in other
18 words, already on the books -- in determining the
19 share price to be paid to the tendering
20 shareholders in the transaction?

21 A. I am. If you didn't do that, then post-
22 closing, the share price would be less because now
23 you have more debt to offset the share price. I
24 mean, you'd have to. I mean, if you did basic

1 sources and uses, you'd come up with the same
2 answer.

3 Q. And what about the fact that you just
4 redeemed half the shares; does that have any
5 impact on the analysis?

6 A. (No response.)

7 Q. In this case, the company redeemed
8 almost half the shares through --

9 A. Understood.

10 Q. -- through the transaction.

11 A. I mean, I'm not sure you're
12 understanding me.

13 Q. That could very well be.

14 A. Well, let's -- simple approach to it.

15 You would value the company. Customarily, that's
16 done on a free cash flow basis with a balance
17 sheet neutral assumption, right? So you're not
18 making any assumptions about what kind of capital
19 structure it has.

20 You're going to make some adjustments
21 for changes in working capital. You might have
22 some historical numbers for unfunded capital
23 expenditures. You're going to presume a tax
24 effect to come to something that would approximate

1 a free cash flow number.

2 That -- those values -- it's very hard
3 to talk if they're going to be conferring when I'm
4 talking (indicating). Just give me a break for
5 two seconds.

6 Q. You need to focus.

7 A. I'm trying. That -- those values, pro
8 forma basis, typically based on historical
9 information, are generally present value based on
10 a variety of measured -- different techniques of
11 discounting and capitalized in addition to the
12 residual value of the business is classically how
13 it's done. That creates an enterprise value.

14 The enterprise value less any of the
15 debt we've been talking about and other
16 adjustments to the balance -- from the balance
17 sheet would be what the equity would be worth on a
18 first day, one moment after the thing closes
19 basis.

20 Q. Okay.

21 A. So you wouldn't do a deal where the one
22 moment after it closes, all of a sudden the stock
23 price is less because you haven't accounted for
24 all the debt because the equity is a smaller

1 number.

2 Q. Right. Is it true that if a company
3 redeems a shareholder his entire shares, that the
4 total equity value of company would decline by the
5 amount of the redemption?

6 A. Yeah. I mean, you've basically --
7 excuse me. You've netted out the debt for the
8 equity.

9 Q. And this is true whether the company
10 uses its own cash or if it takes on debt to redeem
11 those shares, right?

12 A. (Coughing.) Excuse me.

13 Q. Sure. I'll repeat the question. It was
14 that good a question, huh?

15 A. We've been talking a lot, you and I.

16 Q. This is true whether the company use its
17 own cash or if it takes on debt to redeem those
18 shares, correct?

19 A. In effect, you have -- you have reduced
20 the assets of the company either by the effect of
21 increasing the liability or reducing the cash.

22 Q. Okay. What do you understand the term
23 "enterprise value" to mean?

24 A. Enterprise value is the -- is the claims

1 of total -- of the total capital of the company,
2 including the value of the equity and the value of
3 the debt.

4 Q. So is it fair to say an enterprise value
5 is the sum of total equity and total debt of a
6 company net of cash?

7 A. Not necessarily no cash.

8 Q. If a company's enterprise value is a
9 hundred dollars and the company had no debt or
10 cash, what would the equity value be?

11 A. A hundred dollars.

12 Q. If that company borrowed \$50 of debt
13 from the bank to redeem a 50 percent owner, how
14 much would the company have to pay the 50 percent
15 owner to redeem his stock?

16 A. I'm going to ask you to repeat that just
17 because I want to hear it all over again.

18 Q. No problem. I'm happy to. It's a very,
19 very good question, isn't it?

20 A. I'm not sure. I don't -- I'm not sure
21 what you asked.

22 Q. If that company borrowed \$50 of debt
23 from a bank to redeem a 50 percent owner, how much
24 would the company have to pay the 50 percent owner

1 to redeem his stock?

2 A. Do you want me to sit there and work
3 that out? So hold on.

4 MS. ANDREW: It's a final exam question.

5 Q. My expert witness can.

6 A. Well, go ahead.

7 Q. He'll be deposed.

8 A. He's not been asked every -- been
9 talking the last six hours.

10 Q. He'll have his day. I think the
11 answer's \$50, I'm being told.

12 A. Sounds like it would probably be
13 correct.

14 Q. See how good my expert is?

15 A. I'll make sure to hire him next time.

16 Q. In all seriousness, sir, what would the
17 total enterprise value be before and after the
18 hypothetical redemption you and I just discussed?

19 A. The enterprise value would be the same.

20 Q. What would the total equity value be
21 before and after the hypothetical redemption we
22 just discussed?

23 A. The equity value would -- if we did the
24 redemption, if I bought the company, my equity is

1 whatever my equity is netable, whatever my
2 enterprise value, whatever my debt is at the time.
3 Another reason why the put price guarantee is
4 pretty hard to believe, but go ahead.

5 Q. Can you, for the record, state what the
6 put price guarantee is?

7 A. Well, at least for the first year, it
8 looks like it's \$840 per share, but it was 889
9 based on the valuation.

10 Q. 894.

11 A. 894, sorry. I keep reversing...

12 Q. Yeah.

13 A. Right.

14 Q. But you didn't tell me what the put
15 price protection is, what the -- you keep -- for
16 some reason, you felt a need to raise that issue
17 again, and we've learned that somehow, somehow the
18 material term of the deal you just got flat out
19 wrong.

20 Now that you understand what the term of
21 the deal is, do you want to tell me what you
22 understand the term of the put price agreement is?

23 A. Well, let's even take the first year.

24 Q. You can't just take the first year.

1 It's an agreement that ran -- spanned three
2 years. So what are the terms, sir?

3 A. Well, I'd have to go back and look at
4 what was on there.

5 Q. Let's focus on a different area of your
6 report, and that has to do with your conclusions.
7 So if you would go there, I would appreciate it.

8 I want to initially focus on the last
9 paragraph of your conclusions that's on page 25.

10 A. Okay.

11 Q. And in particular, for this segment of
12 the deposition, the very last sentence.

13 A. Okay.

14 Q. You write "Mismanagement of and
15 interference with the sale process by the
16 directors and their advisors caused the company to
17 lose the opportunity to realize between 20 million
18 and 30 million in value and to waste 6 million on
19 professional fees." Did I read that correctly?

20 A. Yes.

21 Q. Is it your view that this is the --
22 between 20 and 30 million -- or, actually, why
23 don't you tell me, what is the 20 to 30 million
24 dollars in value there in your view? What was

1 your purpose in writing that?

2 A. Just looking at what the CRG valuation
3 was in the bankruptcy petition in '08 relative to
4 what the offer was from -- the baseline offer was
5 from Whitney.

6 Q. Is it your view that 20 million to 30
7 million dollars is a reasonable damages
8 calculation for the plaintiff in this case based
9 on the 2007/2008 sale process?

10 A. That's what I believe was the amount of
11 money that was not realized as a result of the
12 actions taken by the company.

13 Q. And do you get there through simple
14 arithmetic by taking --

15 A. Simple arithmetic.

16 Q. It's just simple arithmetic? Okay.

17 And that simple arithmetic relies, if
18 you go to the first page, on either the Sun verbal
19 offer or the \$54 million letter of intent and you
20 subtract out from that something between 31 and 38
21 million dollars of enterprise value that CRG
22 estimated in the bankruptcy?

23 A. Most -- the Whitney offer.

24 Q. Can we take the 63 million out? You're

1 not considering that any further for purposes of
2 determining what the company lost by way of value,
3 in your mind?

4 A. Yeah. To me, the offer was the
5 J.H. Whitney offer in May.

6 Q. Do you disclaim any reliance on the \$63
7 million, quote, unquote, verbal offer as you put
8 it in your report?

9 A. I don't -- I don't disclaim it. I mean,
10 the -- it's hard to know what that was really
11 going to turn into. It never got past a certain
12 point, so...

13 Q. Okay. It's not a reliable data point,
14 is it, in terms of figuring out what the company
15 actually --

16 A. It never became a -- it never became an
17 official offer.

18 Q. It's not a reliable data point, is it?

19 A. That'd be -- sure.

20 Q. You agree with me?

21 A. I agree.

22 Q. So looking at --

23 MR. SHARKEY: Can I hear the question
24 and the answer, please?

1 (The previous few questions and answers
2 were read back.

3 Q. (By Mr. Scheier) Then putting aside the
4 \$63 million verbal offer from Sun that you
5 reference that's no longer a part of your analysis
6 and focusing on the \$54 million letter of intent
7 from J.H. Whitney, did you review the J.H. Whitney
8 letter of intent in preparing this report and in
9 formulating your opinions?

10 A. I did. I read it.

11 Q. Did you recognize that the \$54 million
12 price that Whitney had stated in that letter of
13 intent was contingent on additional due diligence
14 by Whitney and ultimately the closing of a
15 definitive agreement?

16 A. Yes, which is -- which is more than
17 customary.

18 Q. And you don't know one way or the
19 other -- if the board of directors accepted that
20 offer -- that the company would actually realize
21 the \$54 million amount of consideration that is
22 set forth in Whitney's letter of intent, correct?

23 A. There's no way to know that.

24 Q. And there's certainly no evidence on

1 this record to venture a guess?

2 A. They did substantial due diligence. If
3 it went into an APA into a 363, it would have been
4 a guaranteed bid.

5 Q. But that never --

6 A. The worst --

7 Q. Go ahead.

8 A. The worst it would have been would have
9 been \$54 million if there wasn't anybody else
10 stepping up to the option of the 363 sale, so...

11 Q. Although J.H. Whitney never, by way of
12 definitive agreement, agreed to pay \$54 million
13 because it never actually completed its due
14 diligence, correct?

15 A. It had done a fair amount of due
16 diligence ahead of that, but...

17 Q. Did you see any evidence that they
18 completed their due diligence and --

19 A. There's -- there's --

20 Q. -- and set on the \$54 million price?

21 A. There's no way to know that that would
22 be the final price.

23 Q. Let's look at the number you have at the
24 other end of your calculation. That's a CRG

1 estimated value at 31 to 38 million dollars that
2 appears in your report and that you rely upon. Do
3 you know the purpose that CRG prepared that
4 estimate of company value?

5 A. Well, it's part of the -- part of the --
6 part of the -- part of the -- that requirement for
7 that bankruptcy filing, so...

8 Q. Did you review any of CRG's work
9 underlying its value estimate?

10 A. I didn't.

11 Q. Did you review any of CRG's underlying
12 work papers?

13 A. I didn't.

14 Q. Did you review the models that it
15 prepared in coming up with that number?

16 A. No, just that I knew it was relatively
17 consistent to everything else we'd seen.

18 Q. Did you review any of CRG's assumptions
19 that it used in coming up with --

20 A. I didn't.

21 Q. -- that value number?

22 A. No.

23 Q. Did you review any of the underlying
24 corporate financial reporting that CRG relied upon

1 in coming up with its value estimate in the
2 disclosure statement?

3 A. I'm certainly aware of where things were
4 financially and what the statements look like; but
5 did I look at their actual analysis, the answer's
6 no.

7 Q. Do you know what documents they
8 considered?

9 A. I don't, no, because I didn't see their
10 analysis.

11 Q. Did you review any of the underlying
12 corporate forecasting that CRG relied upon in
13 estimating the value of the business?

14 A. I didn't see the actual forecasting,
15 just the comments about their forecasts.

16 Q. And whose comments were those?

17 A. Oh, I think I knew there was -- they
18 were estimating a 7-1/2 percent decline, and I
19 can't remember exactly where, but it was somewhere
20 in the -- in the -- after the Whitney offer went
21 down, there was a report from Houlihan back to the
22 -- to the -- to the lenders, the senior lenders,
23 who were being asked to be reviewed -- asking for
24 a review of what the current activity was, and

1 that the other 363 bidders were going to be either
2 not playing or substantially lower than they were
3 before.

4 Q. Well, that might be, sir, but I asked
5 whether you reviewed any of the underlying
6 corporate forecasting that CRG relied upon, not
7 anything --

8 A. I'm just pointing out where I picked it
9 up.

10 Q. But did you look at any of the
11 underlying --

12 A. No.

13 Q. -- corporate forecasting?

14 A. I'm just pointing out where I -- where I
15 -- where I saw it.

16 Q. The answer is, no, you did not look at
17 any of those documents?

18 A. That's the answer.

19 Q. Do you know who at CRG performed that
20 valuation?

21 A. I think it was Michael Epstein.

22 Q. Do you know if he did it on his own?

23 A. Don't know. I do not -- it certainly
24 was under their name, under CRG, so I assumed it

1 was him.

2 Q. But you don't know one way or the other
3 if it was actually Michael Epstein that prepared
4 the --

5 A. I presumed it was.

6 Q. But you don't know for certain?

7 A. I don't think I know for certain,
8 although it might be indicated in the report, but
9 I don't -- I'm not sure that it's in the petition.

10 Q. Did you get that number out of the
11 disclosure statement?

12 A. Well, I got it out of the -- I believe
13 what was the bankruptcy petition, and I'm not sure
14 which actual document it was.

15 Q. Did you talk to anyone at CRG about --

16 A. I did not.

17 Q. -- that valuation?

18 Sir, I'm going to mark the disclosure
19 statement dated November 12, 2008, from The
20 Antioch Company's bankruptcy.

21 (Deposition Exhibit No. 802 was marked.)

22 It's marked as Exhibit 802, and I'll
23 hand that to you. And don't fret, I have
24 questions relating only to a single page.

1 A. Okay.

2 Q. And I will in a moment identify that
3 page for you. It is page 70 of the disclosure
4 statement. You produced this disclosure
5 statement, and I say that based on the Bates label
6 Greenberg 01646 on the first page. Do you recall
7 reviewing this --

8 A. Yes.

9 Q. -- as part -- while you were preparing
10 your report and formulating your opinions?

11 A. I remember reading this paragraph, yes.

12 Q. Okay. This paragraph E you're referring
13 to is on page 70 of the disclosure statement?

14 A. Yes.

15 Q. And that's on Greenberg 01721?

16 A. Correct.

17 Q. The first sentence under E says "At the
18 request of the debtors, CRG Partners performed a
19 discounted cash flow valuation analysis of
20 Reorganized Antioch. The total enterprise value
21 of Reorganized Antioch was assumed for the
22 purposes of the plan by the debtors, based on
23 advice from CRG Partners, to be between
24 approximately \$31.6 million and \$38 million."

1 Is that the source of the CRG estimate
2 of \$31 million to \$38 million that appears on page
3 24 of your report --

4 A. Yes.

5 Q. -- that's Exhibit 797?

6 A. Mm-hmm.

7 Q. I'd like to skip down to the next
8 paragraph, and it states there "The foregoing
9 valuations are based on a number of assumptions."
10 Did you review and analyze any of those
11 assumptions?

12 A. I have not.

13 Q. The last sentence of that second
14 paragraph under Section E states "The value of an
15 operating business such as debtor's business is
16 subject to uncertainties and contingencies that
17 are difficult to predict and will fluctuate with
18 changes in factors affecting the financial
19 condition and prospects of such a business,"
20 period. Did I read that correctly?

21 A. Yes.

22 Q. Do you believe that to be an accurate
23 statement?

24 A. Yes, I do.

1 Q. You can put that aside. I'd now like to
2 look at another aspect of your conclusions, and
3 that is -- or remark again on page 25.

4 It's in the third line on that page
5 where you write "The board's inability to come to
6 real decisions was aided by a stream of inherently
7 un-executable proposals brought to them by Lee
8 Morgan and Candlewood. Candlewood, besides
9 disrupting the marketing and negotiating processes
10 of Houlihan, appeared to just feed Lee Morgan's
11 fantasies." Do you see that?

12 A. I do.

13 Q. You understood Candlewood was submitting
14 proposals between November 2007 and about June
15 2008, correct, to the Special Transaction
16 Committee?

17 A. Yes.

18 Q. Do you attribute any part of the 20 to
19 30 million dollars in alleged lost value to
20 anything Candlewood had done?

21 A. Not to what Candlewood specifically had
22 done, but certainly to holding out the idea that
23 somehow there was this better deal at much higher
24 valuation, which Candlewood in my view certainly

1 aided that, and that created that fantasy, if you
2 will.

3 Q. Well, again, those fantasies and that
4 course language aside, the question is whether you
5 can attribute any part of the 20 to 30 million
6 dollars in alleged lost value to Candlewood's or,
7 as you like me to do, Mr. Morgan's participation
8 in the sale process?

9 A. I absolutely do.

10 Q. How much of the 20 to 30 million
11 dollars?

12 A. By my guess, because of the idea that
13 somehow there was a consensual deal available to
14 them, that somehow Candlewood nor -- and
15 Mr. Morgan together, because they couldn't get
16 what they wanted, ended up basically killing off
17 the -- the Whitney deal, and that was the
18 undercurrent throughout that whole '07/'08 period.

19 Q. How did Candlewood kill the Whitney
20 deal?

21 A. They didn't kill the Whitney deal.

22 Q. How did Mr. Morgan --

23 A. I'm making a causal argument. I'm
24 saying that -- that the belief that somehow there

1 was a better deal out there despite the fact that
2 over 170 contacts were made with buyers in this
3 marketplace for this particular company and
4 numerous NDAs executed, in review of the
5 confidential information, memorandum and -- and
6 actual bids in that whole process -- despite all
7 that, they still held out the idea that somehow
8 there was a better deal out there for the -- for
9 all the constituents.

10 Q. And, in fact, it turns out, doesn't it,
11 that Mr. Morgan and Candlewood were a little
12 prescient because during the time that they were
13 participating in the process, J.H. Whitney
14 increased its offer by \$10 million?

15 A. I disagree with your -- with your --
16 with your making that connection.

17 Q. I'm not making any connection. Just
18 telling you that during the time Candlewood and
19 Mr. Morgan were participating in the process
20 between March 2008 and June 2008, Whitney, as a
21 matter of fact, increased its letter of intent
22 price from 44 million to 54 million; isn't that
23 correct?

24 A. They did.

1 Q. Okay. Let me ask you this: When it
2 comes to the 20 to 30 million dollars in alleged
3 lost value, how much of that lost value is
4 attributable to anything Mr. Morgan did as opposed
5 to anything the board of directors generally did,
6 in particular the Special Transaction Committee?

7 A. You'll have to restate the question.

8 Q. Sure. How much, if any, of the 20 to 30
9 million dollars in alleged lost value do you
10 consider to have been caused by anything
11 Mr. Morgan or Candlewood partners did?

12 A. I think they were very much involved
13 with the loss of that -- that amount of money
14 including actions taken by the board and -- and --
15 yeah, I do.

16 Q. I'm asking you do you attribute a
17 specific part of the 20 to 30 million dollars in
18 lost value to any specific conduct of Mr. Morgan
19 or Candlewood, and how much of that alleged loss
20 in value do you attribute or do you consider being
21 caused or proximately caused by their conduct?

22 A. I certainly think it's proximately
23 caused by their conduct and by their -- and by how
24 the business and the company and the board of

1 directors and the Special Transaction Committee
2 interacted with them and with the -- despite all
3 evidence that this was not going -- there was not
4 going to be a better deal, and there was a lot of
5 evidence to that.

6 Q. And the only reason the company lost
7 that value, in your mind, is because it didn't
8 close the Whitney deal, correct?

9 A. Yes, principally, yes.

10 Q. And the reason the Whitney deal didn't
11 close on this record is because an independent sub
12 trustee voted 85 percent of the company's shares
13 to remove the board that was considering the
14 definitive agreement with Whitney; isn't that
15 true?

16 A. I believe it's true that his action --
17 Ken Lenoir's action certainly -- certainly did
18 that, but --

19 Q. And but for Ken Lenoir's action, is it
20 also true that presumably the Special Transaction
21 Committee would have pursued a deal through a 363
22 sale with J.H. Whitney if not a higher bidder?

23 A. It looked that way.

24 Q. Sticking with your conclusion section,

1 I'd like you to go to the first paragraph, please,
2 of page 24.

3 A. Okay.

4 Q. You conclude there that it would
5 trivialize matters to opine on the decisions that
6 led to the demise of The Antioch Company as simply
7 being miscalculations.

8 Are those the decisions in 2003 to enter
9 into the hundred percent ESOP transaction?

10 A. That's correct.

11 Q. Okay. And you're saying they weren't
12 just miscalculations?

13 A. I think they saw what was there, and
14 they neglected to really deal with what -- what
15 would be potentially the case.

16 Q. Are you saying it's something other than
17 miscalculations?

18 A. I'm saying that they decided to move
19 ahead despite some reasonable evidence that things
20 could be a lot worse than they turned -- than they
21 thought they would be -- or that things could be a
22 lot worse and they decided to go anyway.

23 Q. And you said that despite never having
24 seen a single board of director's presentation or

1 a slide presentation made during the entire 2003
2 calendar year to the board of directors?

3 A. Please restate.

4 Q. I'm asking that that is your view
5 despite the fact that you have never seen or
6 reviewed a single presentation made to The Antioch
7 Company Board of Directors during the entire
8 calendar year 2003 about the transaction?

9 A. I'm trying to think if I've seen
10 anything in that regard.

11 Q. You've already testified a number of
12 times that you did not.

13 A. It's based on --

14 Q. Sir, I'm not asking what it's based on;
15 I'm asking you a simple question.

16 A. Yeah.

17 Q. The very, very serious allegation you
18 make against people who spent countless hours with
19 some of the best advisors in the country in trying
20 to do the right thing by the company and its
21 employees -- you're making very serious
22 allegations here.

23 A. I am.

24 Q. What I'm saying is if it was -- your

1 holding your views without ever having -- I'm just
2 confirming you're holding those views without ever
3 having reviewed a single presentation made to the
4 board of directors throughout the entire year 2003
5 that included information upon which they based
6 their decision to proceed with the transaction?

7 A. In that narrow, narrow characterization,
8 yes.

9 Q. Okay. And you're also making those very
10 serious allegations against, you know, very
11 dedicated and smart people who worked very hard to
12 close a very complex transaction without ever
13 having reviewed any GreatBanc or Duff work papers
14 in regard to analyzing the fairness of the
15 transaction from the ESOP's perspective?

16 MS. ANDREW: Objection to the
17 assumptions in the question. You can answer.

18 A. Please restate. I lost my flow.

19 Q. You maintain to hold your very harsh
20 judgment of a group of people that worked very
21 hard over a -- throughout a year-long process to
22 consider a transaction without ever having
23 reviewed any of the work papers of GreatBanc Trust
24 or Duff & Phelps or any of the analyses of either

1 of those entities that led them to conclude that
2 the transaction was financially fair to the ESOP
3 and its beneficiaries?

4 MS. ANDREW: Same objection.

5 A. I'm struggling with your question.

6 Q. I don't know why.

7 A. Why don't you try me again.

8 Q. Sure. I'm just confirming that your
9 views about the board's decision to move forward
10 with this transaction -- that it was something
11 more than just a miscalculation -- is made despite
12 the fact you did not review any of the work papers
13 or analysis performed by the GreatBanc Trust
14 Company or Duff & Phelps leading to their opinion
15 that the transaction terms and the transaction
16 price was fair to the ESOP and its participants
17 from a financial point of view?

18 A. Fair to the ESOP and the participants...
19 I'm struggling with that part of it. Are you --

20 Q. Did you look at any work that GreatBanc
21 and Duff did to improve the transaction on behalf
22 of the ESOP?

23 A. I did not have access to that
24 information.

1 Q. Did you review any emails or
2 correspondence between Lee Bloom and Helen
3 Morrison, neither of which you knew before I
4 introduced them to you at this deposition,
5 negotiating the transaction on the one side Lee
6 Bloom for the ESOP, and on the other side Helen
7 Morrison for the company?

8 A. I have not seen those.

9 Q. And yet you still feel confident in your
10 opinion that the board's decision to move forward
11 was more than just a miscalculation?

12 A. Yes.

13 Q. Okay. And you also hold that view even
14 though you haven't looked at a single repurchase
15 obligation study that Mr. Hoskins prepared and
16 presented to the board about the effect of the
17 transaction on the company's liabilities in that
18 regard?

19 A. I understand Mr. Hoskins' repurchase
20 liability --

21 Q. I'm not asking for your understanding of
22 it. The simple question is this --

23 A. My understanding is he was nowhere near
24 what happened, not even close.

1 Q. You're making that judgment because the
2 Taft lawyers told you that?

3 A. Making that judgment because that was a
4 conversation that we discussed with the Taft
5 lawyers at various times when we went through
6 this.

7 Q. You're not --

8 A. It was nowhere near the redemption level
9 that happened.

10 Q. You're not basing that in any review --

11 A. I want to make sure that people know
12 that it's not what -- it's not that somebody was
13 estimating was \$110 million, because it was
14 nowhere close.

15 Q. Well, the point is you didn't look at
16 any work Mr. Hoskins did to estimate the
17 repurchase obligation liability; is that right?

18 A. I didn't, but I was told that it was
19 somewhere around 25 million at the max. It was
20 obviously far less than what happened.

21 Q. If what you were told was wrong, might
22 that change your opinion?

23 A. I'd have to see it.

24 Q. Okay. But you didn't see it?

1 A. Hmm-mm.

2 Q. The answer was you did not see it?

3 A. The answer is I did not see it.

4 Q. And did you look at any of Mr. Hoskins'
5 PowerPoint presentations about the repurchase
6 obligation that the board relied upon in part in
7 voting in favor of the transaction?

8 A. I did -- I did not.

9 Q. Okay. Did you review any of the
10 presentations the board received from Helen
11 Morrison of Deloitte that they took into account
12 in approving the transaction?

13 A. If it wasn't in my group of things that
14 I had, I have not.

15 Q. Did you look at any presentations that
16 Lee Bloom or Marilyn Marchetti made to the Antioch
17 board that they took -- that the board took into
18 account in voting to approve the transaction?

19 A. No.

20 Q. Did you take a look at any of Marilyn
21 Marchetti's or Duff & Phelps through Lee Bloom's
22 report to the GreatBanc Trust Fiduciary Committee
23 that the GreatBanc Trust Fiduciary Committee
24 relied upon in approving an opinion that the

1 transaction was fair to the ESOP and its
2 participants?

3 A. I did not.

4 Q. Did you review any of the due diligence
5 materials contained in the files of the banks that
6 lent into the 2003 transaction?

7 A. I didn't.

8 Q. Did you review any of the deposition
9 transcripts of the bank representatives who were
10 called upon to analyze the transaction from the
11 bank's perspective, in particular, the company's
12 ability to repay the debt that they were lending
13 into the transaction?

14 A. They were not in my file.

15 Q. Okay. Did you ask the Taft lawyers to
16 provide you with any of that information as you
17 were going through and preparing your report and
18 formulating your opinions?

19 A. No. I took from the various reports
20 that I had, the data from there.

21 Q. If you look at the third sentence of
22 your first paragraph, you write "The Morgans, the
23 board of directors, and the ESOP trustee, both
24 GreatBanc and Evolve, had every opportunity to act

1 otherwise to review and heed the historical
2 evidence and to call upon disinterested expertise
3 to assist them in making responsible fiduciary
4 decisions," period. "This did not happen,"
5 period. Do you see that?

6 A. I do.

7 Q. Pretty severe judgment you're making
8 there, isn't it?

9 A. It is.

10 Q. You're making that without ever having
11 seen anything that GreatBanc or any of its
12 employees or advisors did to try to satisfy their
13 fiduciary duties?

14 A. No, I did not.

15 Q. Okay. And you don't have any experience
16 at all, do you, in advising ERISA fiduciaries
17 about their particular duties, do you?

18 A. No.

19 Q. Again you use this phrase "the Morgans."
20 Who do you mean there?

21 A. I suppose I mean specifically Lee
22 Morgan, and I'm probably including in that, having
23 thought through this, Asha Moran Morgan at the
24 same time, but Lee Morgan principally.

1 Q. Okay. And do you believe that GreatBanc
2 did not call upon disinterested expertise to
3 assist them in making a responsible fiduciary
4 decision?

5 A. I believe they got the advice they got,
6 and I certainly wasn't -- wasn't -- I think they
7 got the advice they got, and I didn't think it was
8 very good advice.

9 Q. Sir, you don't even know what advice
10 they did get, do you? You've never seen a work
11 paper, a single piece of advice that GreatBanc got
12 from any of its advisors, did you?

13 A. No.

14 Q. Did you know GreatBanc hired independent
15 counsel from Jenkins & Gilchrist? Are you
16 familiar with that law firm?

17 A. I am.

18 Q. Are you familiar with their spot in ESOP
19 and ERISA space?

20 A. I assume by your comment that it must be
21 highly regarded.

22 Q. It's very highly regarded. Do you
23 believe that the board's engagement of Houlihan
24 Lokey was not a call upon disinterested expertise

1 to assist the board in making a responsible
2 fiduciary decision?

3 A. I believe that the -- the Houlihan Lokey
4 opinion was highly narrow -- it was very narrow
5 relative to the share price and not the -- they
6 didn't -- there was not an opinion or a -- or a --
7 or an advisory as to the total transaction.

8 Q. I didn't see you produce the Houlihan
9 opinion. I take it you didn't read it?

10 A. I didn't read it.

11 Q. I didn't see a single piece of Houlihan
12 modeling or work papers in your production. I
13 assume you didn't see that either?

14 A. Not from that period, no.

15 Q. You don't know how narrow or appropriate
16 the opinion was, do you, sir?

17 A. I know what I've been told as we were --

18 Q. Told by who?

19 A. Through my -- with Taft counsel -- with
20 Taft.

21 Q. I don't even know if Kelly could get
22 that down. By who were you told?

23 A. In conversations with the Taft lawyers
24 about the transaction.

1 Q. Okay.

2 A. And in addition to doc- -- as it was --
3 as it's summarized in some of the complaint
4 documents.

5 Q. Do you believe that the board didn't
6 call upon disinterested expertise when it engaged
7 McDermott, Will & Emery to advise it as legal
8 counsel in respect to the 2003 transaction?

9 A. They're a law firm. They advise them.

10 Q. So the board had McDermott, Will, you
11 recognize, as its legal advisors?

12 A. I do.

13 Q. You recognize McDermott, Will & Emery is
14 also a prominent law firm in the ERISA/ESOP
15 advisory space?

16 A. If you say so.

17 Q. You have no reason to disbelieve that?

18 A. I do not.

19 Q. And you have no reason to disbelieve
20 that Houlihan Lokey is one of the most prominent
21 national advisors in the ERISA, slash, ESOP
22 space; is that right?

23 A. Yes.

24 Q. And you have no reason to doubt that

1 Deloitte & Touche is one of the most prominent, if
2 not the most prominent, financial advisor in the
3 ERISA/ESOP space, and in particular, in 2003?

4 A. Mm-hmm, yes.

5 Q. So the board, in considering over a full
6 year a very complex transaction in 2003 where the
7 company was going to become owned 100 percent by
8 its ESOP, engaged McDermott, Will & Emery, a top
9 law firm in that space, Houlihan Lokey, a top
10 financial advisor in that space, Deloitte &
11 Touche, a top financial advisor in that space,
12 GreatBanc, one of the leading institutional
13 independent ESOP trustees who, in turn, hired Duff
14 & Phelps, one of the most prominent financial
15 advisors in that space, and GreatBanc also hired
16 Jenkins & Gilchrist, one of the most prominent
17 legal advisors in that space -- knowing all that
18 now, do you still believe that the board somehow
19 failed to call upon disinterested expertise to
20 assist it in making responsible fiduciary
21 decisions?

22 A. I believe that they did not look at what
23 needed to be looked at, and they were cherry
24 picking what they thought was the right thing to

1 do.

2 Q. You haven't seen a single document --

3 A. You asked me what I believe.

4 Q. Okay. Very well. I just want to
5 confirm you've not seen a single document that
6 identifies what advice the board took or might not
7 have taken from any one of those financial
8 advisors?

9 A. I think I confirmed that already.

10 Q. Okay. I want to turn your attention,
11 please, if you would to the third paragraph of
12 your conclusions where you write (as read) In
13 spite of the overwhelming evidence, dash, evidence
14 that would be incontrovertible to any qualified
15 financial and transaction professional, double
16 dash, of the precariousness of their underlying
17 assumptions, the Morgans, with the consent of the
18 board of directors, entered into a bargain with
19 the ESOP trustee that literally drained the
20 company of its working capital while at the same
21 time creating an irresistible incentive for
22 numerous employees to leave the company. Did I
23 read that correctly?

24 A. Yes.

1 Q. What evidence are you referring to there
2 that will be incontrovertible to the qualified
3 financial and transactional professionals that we
4 just identified were engaged by the board to
5 assist it in executing it's fiduciary
6 responsibilities?

7 A. Well, first, nobody looked at what would
8 happen with the impact of the redemptions.

9 Q. How do you know that, sir?

10 A. Well, because it -- how could you -- if
11 you did, would you go ahead and do this?

12 Q. Did you see any of the repurchase
13 obligation studies that were performed by
14 Mr. Hoskins?

15 A. I haven't, but I understood.

16 Q. Did you see any of the repurchase
17 obligation studies performed by Duff & Phelps on
18 behalf of GreatBanc?

19 A. I have not.

20 Q. Did you see any other repurchase
21 obligation study done by Deloitte & Touche in
22 assessing the feasibility of the transaction to
23 the board?

24 A. If they came out with the -- if the

1 feasibility studies showed what occurred even
2 close, nobody would have done this.

3 Q. Sir, you recognize that -- well, let's
4 move on.

5 A. Mm-hmm.

6 Q. What evidence did you see that was
7 before the board of directors as of December 16th,
8 2003, immediately before deciding to proceed with
9 the transaction that would be incontrovertible to
10 any qualified financial and transactional
11 professional to lead them to believe that the
12 underlying assumptions of the transaction were
13 precarious, as you state? What evidence? Point
14 me to a single piece of evidence.

15 A. Evidence of what?

16 Q. The evidence you're referring to.

17 A. Evidence of the capital restructure?
18 Evidence of the redemption levels? What
19 evidence?

20 Q. I didn't write this report.

21 A. I know, but you're asking me the
22 questions.

23 Q. Well, I'm asking you what you mean. In
24 spite of the overwhelming evidence --

1 A. You had a --

2 Q. -- evidence that would be
3 incontrovertible -- let me put it -- instead of
4 using your words, let me substitute in the names
5 of the advisors.

6 Let's look at it this way,
7 Mr. Greenberg: In spite of the overwhelming
8 evidence, evidence that would be incontrovertible
9 to Duff & Phelps and GreatBanc and Deloitte &
10 Touche and Houlihan Lokey and McDermott, Will &
11 Emery and Jenkins & Gilchrist of the
12 precariousness of the underlying assumptions, I'd
13 like to know what evidence all of those nationally
14 prominent advisors had before them that should
15 have been incontrovertible to them that the
16 assumptions underlying the proposed transaction
17 were precarious?

18 (Attorney Maffett left the room.)

19 A. I've said it many times. You had a
20 catastrophe of a balance sheet. You had -- you
21 had all the potential -- which it increasingly
22 occurred anyway, it just took time through the
23 2003 through 2008 period -- of insolvency.

24 You had enormous amounts of redemptions

1 and people leaving the company. You've burdened
2 the company with substantial amounts of debt.
3 There's a lot of things that were evidence of it.
4 And let me finish.

5 And not only that, you had prior
6 years -- where in a period of three years prior,
7 you had somewhere close to 30, 33 million dollars'
8 worth of redemptions, and then you end up with 110
9 million -- I'll use your number -- in the
10 following -- in the year following the
11 transaction.

12 800 out of 1,115 employees leave the
13 company, and you're burdened with this enormous
14 amounts of debt that certainly assumed a lot of
15 capital and cash of the company, prevented it in
16 my view from doing a lot of different things that
17 may have prevented it going into the bankruptcy it
18 did.

19 Q. What analyses of the company's ability
20 to fund the debt it was undertaking that was
21 before the board of directors and all of the
22 advisors we just mentioned did you look at and
23 analyze to determine whether or not it was
24 reasonably prepared?

1 A. I'm looking at --

2 Q. What you're doing basically is in 2013
3 looking back to what happened, and I'm asking you
4 to focus on December 15th, 2003.

5 A. Mm-hmm.

6 Q. And I'd like to know how, not having
7 looked at a single work paper prepared by any of
8 the most prominent financial professionals, folks
9 far more prominent than you, sir, prepared and
10 gave to a board of directors to support a
11 transaction -- how you are able to give an opinion
12 about the board's conduct without ever having seen
13 a single work paper, analysis, board minute, or
14 evidence of a board discussion about this
15 transaction. How could you do that?

16 A. I've done it. I've looked at it. I saw
17 what happened. I looked at the decisions that
18 were made. And I have to scratch my head and
19 figure out how would -- why would anybody do this?

20 Q. And you know why you're scratching your
21 head? Because you didn't see a single piece of
22 information that the board was relying upon --

23 A. That's your --

24 Q. -- that they were given --

1 A. That's your --

2 Q. -- by some of the most prominent
3 financial advisors in the country at the time;
4 isn't that true?

5 A. No, that's not true.

6 Q. Okay.

7 A. You cannot make assumptions about what
8 I'm thinking. You're pretty good.

9 Q. I am pretty good at that.

10 A. Oh, yeah, you're wonderful.

11 Q. You said something about the company in
12 your view in your 20/20 -- I think the jury will
13 recognize the term Monday morning quarterback look
14 back -- an issue that the company could have
15 undertaken that would have prevented the
16 bankruptcy. What issue are you talking about,
17 that they didn't have cash to fund that would have
18 prevented a bankruptcy?

19 A. I think you would -- this whole -- I'm
20 not suggesting that it would have prevented the
21 bankruptcy; what I'm suggesting is they probably
22 wouldn't have done it the way they did it to start
23 with.

24 Q. Well, I don't think anybody would tell

1 you that looking back in hindsight they may or may
2 not have done the transaction. The question is
3 really what information the board had at the time.
4 And you don't know that, so I'm trying to -- I'm
5 trying to move from that --

6 A. I'm trying to find where you -- what
7 you're referring to.

8 Q. I'm referring to your testimony.

9 A. Well, show me where you're referring to.
10 Is it anything in here?

11 Q. No. It's in your testimony.

12 A. No. What I'm saying is that if you
13 looked at what happened, you -- they would have --
14 they would have looked at the potential for what
15 would have occurred given -- given the dramatic
16 change in the financial profile of the company and
17 its financial characteristics -- given all that
18 and given the evidence of what the previous
19 redemption levels were, you may have considered
20 doing this very differently.

21 Instead, the cash went out the company.
22 It went to pay service -- very expensive service
23 debt, service sub debt, and redemptions. None of
24 it made it really back in. I know you argue that,

1 but if I look at current assets over the same
2 period, it's very clear to me that the money
3 wasn't really making it back into the capital of
4 the company.

5 Q. Yeah, you haven't seen any evidence,
6 though, of how the company used its post-
7 transaction cash at all to fund, for example, new
8 initiatives that would help it compete in the
9 marketplace?

10 A. With the -- yeah, what I've read is that
11 there are -- were numerous -- and we'll -- I can't
12 point out each one of them because I don't
13 remember every document. There were many comments
14 by the private equity groups and certainly also in
15 the summaries by the investment bankers that these
16 initiatives were not terribly promising.

17 Q. Which --

18 A. The digital.

19 Q. And did you analyze or take into account
20 whether any of the private equity group people
21 making those remarks had the expertise in the
22 scrapbooking and memory preservation industry to
23 make that judgment?

24 A. I believe one did.

1 Q. Who?

2 A. I can't offhand...

3 Q. Yeah, I figured.

4 A. It's been a long day. I know you
5 figured.

6 Q. I figured as much.

7 A. It's there. We could certainly find it
8 for tomorrow, if you like.

9 Q. Well, sir, I'm here today, and you knew
10 we were coming here today, and you knew the
11 purpose today was to do some discovery and to go
12 through your opinions, and you should have been
13 prepared in that regard.

14 A. Mm-hmm.

15 Q. One other aspect of the conclusion in
16 your report has to do with \$6 million on
17 professional fees in the process?

18 A. Yeah.

19 Q. First of all, that \$6 million figure,
20 what period does that cover?

21 A. '7/'8. 2007/2008.

22 Q. And how many of those fees were spent by
23 the company before Mr. Lenoir exercised his rights
24 as an 85 percent shareholder and removed the

1 board?

2 A. I don't know.

3 Q. You don't know?

4 A. You're asking how much those fees were
5 spent prior to Mr. Lenoir exercising his right to
6 dismiss the board?

7 Q. Yes.

8 A. The answer is I don't know.

9 Q. Okay. And I take it, then, you don't
10 know how many of those fees were spent by the new
11 board that Mr. Lenoir appointed after he fired
12 what I'll call the old board?

13 A. I know that Skadden came in. I know
14 that --

15 Q. I wasn't asking you who came in. I was
16 asking you to --

17 A. I don't -- I don't have -- I don't have
18 it broken out.

19 Q. So you can't allocate that \$6 million --

20 A. I haven't, no, and I can't.

21 Q. You can't allocate that \$6 million
22 between the new board and the old board, correct?

23 A. That's correct.

24 Q. Can you allocate that \$6 million among

1 different advisors?

2 A. Not offhand, no.

3 Q. Do you believe that the company received
4 any value out of the fees it paid Houlihan Lokey
5 that ultimately brought the Whitney deal to the
6 company and that it couldn't close for no reason
7 other than Mr. Lenoir's actions?

8 A. (No response.)

9 Q. Under your view.

10 A. Restate your question.

11 Q. Do you know how much of that \$6 million
12 was spent on Houlihan Lokey, for example?

13 A. I don't remember exactly what their
14 retainer fees were. I don't remember.

15 Q. Do you feel that the company -- that
16 Houlihan Lokey provided value to the company
17 throughout the sale process?

18 A. I do.

19 Q. Were there any other professionals other
20 than Houlihan Lokey who received any aspect of
21 that \$6 million that you can recall?

22 A. Were there any other advisors that
23 received some of that money?

24 Q. Yes.

1 A. I would assume that the law firms were
2 receiving some of that money and...

3 Q. Did you ever see any underlying
4 documentation to --

5 A. I have not.

6 Q. I'm sorry?

7 A. I have not.

8 Q. Have you done any sort of independent
9 analysis to determine what value, if any, the
10 company got from any of the advisors that were
11 paid any portion of that \$6 million?

12 A. I don't know how you would do an
13 analysis of what value they got. The company went
14 into bankruptcy.

15 Q. So the answer is, no, you haven't done
16 an analysis?

17 A. The answer is I wouldn't know how to do
18 it anyway.

19 Q. Fair enough. What's the source of the
20 \$6 million figure that you list in your report?

21 A. It was an estimate that I received.

22 Q. Who did you receive that from?

23 A. From the Taft lawyers.

24 Q. I'm sorry?

1 A. From the Taft lawyers.

2 MR. SCHEIER: I'll have to take a short
3 break.

4 (A brief break was taken.)

5 Q. (By Mr. Scheier) Mr. Greenberg, I want
6 to stick with the numbers with regard to loss of
7 value and professional fees that appear on page 25
8 of your report.

9 A. Mm-hmm.

10 Q. When you had written that the lost value
11 as was -- whatever you attribute that to -- the
12 lost value you reference there you say is between
13 20 and 30 million dollars, is that independent of
14 the 6 million in professional fees?

15 A. Yes.

16 Q. Now, am I to understand that at this
17 point, to measure lost value, your two data points
18 are, at the one end, the \$54 million that Whitney
19 offered in its LOI and the 31 to 38 million
20 dollars that CRG estimated as being the value of
21 the company in the disclosure statement?

22 A. Yes. Fair enough.

23 Q. And so I want to just kind of bring to
24 bear -- you probably learned how poor I am at math

1 generally, but I just want to understand, then, is
2 it fair to say that in looking at lost value and
3 doing the simple arithmetic using your two data
4 points, it's somewhere between -- at the low end
5 of the lost value, you take 54 million of Whitney
6 and subtract 38 from CRG to get to \$16 million in
7 lost value, and at the other end, you take the 54
8 from Whitney and you subtract out the 31 million,
9 the low end of CRG's value, to get to 23 million?

10 A. Close enough.

11 Q. And so as I understand that, then, the
12 value ranges of what the company lost in terms of
13 value in your opinion is somewhere between 16 and
14 23 million dollars?

15 A. Yeah, I guess if we do it off the
16 Whitney number.

17 Q. And you've advocated here today doing it
18 off the Whitney number, correct?

19 A. Fair enough.

20 MR. SHARKEY: Can I hear that answer?

21 MR. SCHEIER: He said, Fair enough.

22 Q. (By Mr. Scheier) I take it "fair
23 enough" means yes, which is probably why
24 Mr. Sharkey wanted to hear that response again?

1 A. It did.

2 Q. In considering any lost value that you
3 perceive the company suffered between May of 2008
4 and the time that CRG undertook its analysis, did
5 you consider any other economic or market factors
6 that might have impacted the company's value
7 between the May time frame and the bankruptcy?

8 A. You mean interim from the Whitney offer?

9 Q. Yes.

10 A. Post -- the interim post-Whitney?

11 Q. Yes. From about the time of the Whitney
12 offer through the bankruptcy in terms of
13 estimating lost value, did you take into account
14 any economical market factors that may have
15 impacted the value of the company?

16 A. I haven't.

17 Q. Let me take a step back. In looking at
18 the deterioration in The Antioch Company's sales
19 and financial condition between 2003 and 2008, did
20 you take or -- take into account or consider any
21 economic or market factors that might have
22 impacted the company's sales and business and
23 value in general during that period?

24 A. I'm not sure what you mean by take into

1 account.

2 Q. Yeah. In terms of an opinion or the
3 general tenor of your report that there was
4 something about the 2003 transaction that caused
5 the company ultimately to fail, I was wondering
6 whether in coming to that conclusion, to the
7 extent it is your conclusion, that -- whether you
8 took into account economic or market factors that
9 might have either completely caused or in part
10 caused the company's declining financial condition
11 between 2003 and 2008?

12 A. Fair enough. The way I've addressed it
13 is that to the extent the company was very
14 burdened with the redemptions and with the -- with
15 its debt, that it was in a position where it was
16 not able to address issues that could have been
17 occurring at the time. But there's no doubt
18 that -- that, you know, we went through some
19 different types of economic times from '07 and
20 '08.

21 Q. I apologize. My question might not have
22 been clear or you didn't hear it right. The last
23 question involved the time period stretching from
24 let's call it December 16th, 2003, through the

1 filing of the bankruptcy and whether you took into
2 account any market or economic factors independent
3 of the 2003 transaction that caused the company
4 financial distress?

5 A. If you're asking me do I -- do I -- do I
6 agree that market factors, including competition,
7 was putting pressure on the company financially,
8 the answer's yes.

9 Q. And can you identify the factors that
10 you considered and took into account that the
11 company -- that affected -- impacted the company's
12 financial condition between 2003 and 2008?

13 A. In addition to its capital structure and
14 all that?

15 Q. Yes. Yes, that's a -- thank you for the
16 clarification.

17 A. Yeah, um --

18 Q. Market or economic factors --

19 A. Yeah, they were -- they were losing
20 marketshare to -- to other forms of competitors
21 including different technologies and retailers,
22 e-tailors, and variety of other means to acquire
23 the product. That was certainly having an impact.
24 And they were -- they were not able to certainly

1 adequately change the curve on that during that
2 whole period. But certainly, you know, I do
3 believe that had an impact on the company.

4 Q. Anything other than competition that had
5 a negative impact on the company's financial
6 condition such as the general economic climate?

7 A. Certainly the general economic climate
8 beginning probably in earnest in '08 but -- but
9 the beginnings of it in '07 would have had some
10 impact.

11 Q. Okay.

12 A. I have others. The -- there were also
13 the -- you know, from what I know of network
14 marketing companies of the sort and -- and that
15 the ability to keep the consultants and the
16 recruitment levels higher, that seemed to have
17 been falling off at the same time. That may also
18 be an impact of any number of things -- the
19 competition, economic environment. So there
20 were -- there were several things that were
21 involved.

22 Q. And did you make any effort to quantify
23 the impact of those economic or market forces that
24 operated to the company's detriment independent of

1 its capital structure or the 2003 transaction?

2 A. I just saw the -- the -- there changes
3 in revenue as an indicator that obviously they
4 were getting hit and there was multiple issues
5 there.

6 My point about the capital structure
7 more than anything was -- it hamstrung their
8 ability to address competitive issues and other
9 issues. The company became essentially insolvent
10 and becomes very difficult to address issues when
11 you're -- you don't have the cash.

12 Q. Just a few additional questions, sir.
13 Were you asked to formulate any opinion in this
14 matter other than the ones you've given but you
15 felt you were unable to give?

16 A. No.

17 Q. Has the Taft law firm asked you to do
18 any of the work in regard to this engagement since
19 you finalized your opinions?

20 A. No. The only work we've done has been
21 discussion about the deposition and my reviewing
22 documents. That's all.

23 Q. Have you completed all the work that you
24 deem to be necessary to finalize your opinions in

1 your report?

2 A. I believe so.

3 MR. SCHEIER: I believe that's all I
4 have. Thank you for your time today.

5 (Whereupon, the deposition was adjourned
6 at 5:10 p.m.)

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MARK A. GREENBERG

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1 CERTIFICATE

2 STATE OF OHIO :
3 : SS
4 COUNTY OF HAMILTON:

5 I, Kelly Green, the undersigned, a duly
6 qualified and commissioned Notary Public within
7 and for the State of Ohio, do hereby certify that
8 before the giving of the aforesaid deposition, the
9 said MARK A. GREENBERG was by me first duly sworn
10 to tell the truth; that the foregoing is a true
11 and accurate record of the testimony given at said
12 time and place by said deponent; and that said
13 deposition was taken by me in stenotype and
14 transcribed by computer-aided transcription, and
15 that signature is not waived.

16 I certify that I am not a relative,
17 employee of, or attorney for any of the parties or
18 attorneys in the above-captioned action; I am not
19 financially interested in the action; I am not
20 under a contract as defined in Civil Rule 28(D).

21 IN WITNESS WHEREOF, I hereunto set my
22 hand and official seal of office at Cincinnati,
23 Ohio, this 29th day of August, 2013.

24 My Commission expires:  Kelly Green, RPR
August 10, 2014 Notary Public, State of Ohio

ERRATA SHEET

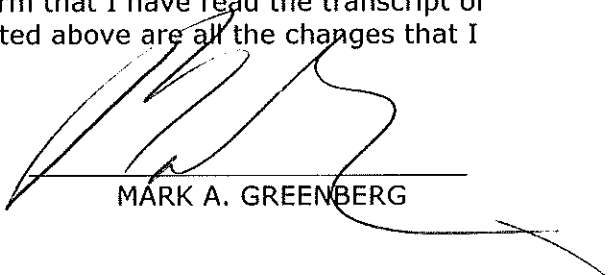
United States District Court – Southern District of Ohio
Western Division - Case No. 3:10-cv-00156
The Antioch Company Litigation Trust vs. Lee Morgan, et al.
Volume I

Listed below are any changes made to the transcript of MARK A. GREENBERG taken on August 26, 2013.

PAGE ! LINE ! CHANGE

86!	8 !	"decorum" should "quorum,"
91!	2 !	"Ryan Style" should be "Rhinestahl"
124!	7 !	"quick price guarantee" should be "put price guarantee"
136!	5 & 6!	"... 1000 dollars" should be "... 1000 employees" _
141!	7!	"customer" should be "customary"
145!	9!	" Dechard" should be "Dechert"
163!	23!	"you were unaware ..." should be "you were aware..."
166!	6!	"extent" should be "excess"
167!	1!	"extent" should be "excess"
176!	4!	"convergent" should be "converted"
181!	21!	"and" should be "in"
186!	10!	"scope" should be "code"
251!	22!	"asymptote" should be "asymptote"
283!	21!	"concluded" should be "included"

I, MARK A. GREENBERG, do hereby swear or affirm that I have read the transcript of my deposition taken on August 26, 2013, and listed above are all the changes that I wish to make to that transcript.


 MARK A. GREENBERG